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EXAMINATION OF THE SOVIET VESSEL "MARSHAL KONEV" AND AGRICULTURAL COMMODITIES RELATING TO GRAIN PURCHASES

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HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

NOVEMBER 12, 1985

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EXAMINATION OF THE SOVIET VESSEL "MARSHAL KONEV" AND AGRICULTURAL COMMODITIES RELATING TO GRAIN PURCHASES

TUESDAY, NOVEMBER 12, 1985

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 9:44 a.m., in room 332, Russell Senate Office Building, Hon. Jesse Helms (chairman of the committee) presiding.

Present: Senators Helms, Cochran, McConnell, Zorinsky, Melcher, and Dixon.

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM NORTH CAROLINA

The CHAIRMAN. The committee will come to order. I understand that Senator Zorinsky is on his way, and other Senators as well.

Since we have a limited time to meet under the rules of the Senate today, we will proceed.

I want to welcome Congressman Tom Lantos of California. Why don't you choose that No. 2 seat right there, since Senator Zorinsky is on his way.

Congressman Lantos represents the 11th District of California. He is a Member of the Foreign Affairs Committee of the House of Representatives and is second ranking, as I understand it, on the Subcommittee on Europe and the Middle East. He has an interest in the subject to be addressed today.

We welcome you.

Thad, good to see you.

Senator COCHRAN. Thank you, Mr. Chairman.

The CHAIRMAN. Sort of hard to get people out on the day after a holiday. But they will be here.

Today, we are going to have two sets of witnesses. I think everybody is aware that this hearing was originally scheduled to hear testimony by Miroslav Medvid, the Ukrainian sailor who sought several times to defect from the tyranny of the Soviet Union, only to be thwarted by a failure of the officials of the U.S. State Department, and others, who refused to cooperate with this committee.

Instead we will hear, for the purposes of the record, the testimony of staff who served the subpoena for the committee. We are also going to hear testimony by an expert witness, Dr. William E. O'Malley, a distinguished neuropsychiatrist and pharmacologist who, on very short notice, agreed to analyze for us those medical

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reports on Mr. Medvid that were released by the State Department late this past Friday. I am confident that Dr. O'Malley's testimony will raise significant questions about the State Department's assertion that Mr. Medvid's decision to return was one made of his own free will.

Once again the State Department clearly decided that it was more important to appease the Soviet Union than to allow a young man to have an unfettered chance for freedom.

Frankly, I was dismayed by the statements of Secretary of State Shultz on "Face the Nation" on Sunday, when the Secretary admitted that Mr. Medvid had faced threats and, as Mr. Shultz put it, "whatever he was subjected to aboard that ship." It is clear that Mr. Medvid was under incredible duress, and I believe that, after the testimony here this morning, we will understand that his so-called free choice was made under the influence of mind-bending drugs.

Immediately after Secretary Shultz' statement on Sunday, a formal invitation was extended to the Secretary to appear before this committee in place of Mr. Medvid. The Secretary declined to come, pleading other engagements. Of course, Mr. Medvid also has other engagements, wherever he is. Nevertheless, further opportunities will be offered to the Secretary to appear here.

Now, let me say for the record that the implications of this event appear to go far beyond the visible requirements of our foreign policy. The Soviets, in their discussions with our staff, in effect asserted that their ship was in the status of extraterritoriality, as though it were an embassy or an enclave. Now, these assertions were made after several telephone calls to Ambassador Dobrynin, so that assertion appears to be a reflection of the official, high-level Soviet position. Indeed, the NSA may have intercepts of these telephone calls from New Orleans to the Soviet Embassy.

Moreover, the State Department curiously appears to have acted in accordance with the Soviet view. According to the recently released in camera proceedings in the D.C. District Court on November 4 (*Ukrainian-American Bar Association, et al.* v. *George P. Shultz, et al.*), the Government lawyers argued that all proceedings in the Medvid case should be held in secret, without the lawyers for Mr. Medvid being present. They argued that the case was highly sensitive, which may be the understatement of the month, and that the State Department was worried about cross-examination of Government witnesses in public and was very reluctant to let these witnesses testify, even in camera.

Furthermore, they stated that the Government witness "did not directly negotiate with the Soviets," but that "negotiations of the ground rules were negotiated at the highest levels." There were suggestions that certain "actions were planned by the United States" and that "the President had indicated that if the Soviets had not backed down, we were prepared to use force." And that is a direct quote.

These were references to the fact that the Soviets initially refused to return Mr. Medvid for questioning after he had been sent back to the ship illegally on the evening of October 24/25.

Now, the question arises: Why would force have been necessary? This was an unarmed merchant ship. The U.S. Government had

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the authority to board it at any time, and the power to quarantine it, and to prevent it from moving. What was the Soviet threat? Did Moscow actually rattle sabres over the defection of one seaman?

The notion that a ship has extraterritoriality while in the jurisdiction of another country is not one to be condoned. As a practical matter, it is not the custom to interfere with the discipline on a foreign ship, unless a crime or crimes have been committed. It is evident that the allegations that Mr. Medvid had been beaten and kidnaped from U.S. soil were crimes. Why was the U.S. Government so protective of the Soviets at this time? Why negotiations? Why ground rules? Why did we accept the proposal that a Soviet KGB officer should be present at all times to intimidate Mr. Medvid during the questioning by State Department staff?

One must ask the question whether these so-called ground rules were drawn according to some preexisting secret agreement. Did we accept extraterritoriality of Soviet ships as a condition of the grain trade? Is it possible to set aside the constitutional rights of aliens, even Soviet citizens, to appease the Soviet Union?

Now, we do know that the Soviets cannot trust their own citizens outside of Soviet borders without massive intimidation and the use of torture and mind-bending chemicals. The Soviets cannot transport grain without sending their citizens abroad. Is there a secret agreement that we will send defectors back?

It should be noted that the European countries which adjoin Communist nations—West Germany, Sweden, Norway, Italy, and others—appear to have a policy of not returning defectors at all. Why is the U.S. policy so different?

Now, it is clear that the executive branch had full authority to take whatever action was necessary to allow Mr. Medvid to be present here this morning, but that it willfully and consciously refused to do so. The Customs Service was overruled in its desire to enforce the law impartially. The Immigration and Naturalization Service was on official notice that Mr. Medvid was wanted for an official hearing in this committee, yet no INS departure control officer attempted to prevent his departure or even serve notice on him.

By obstructing the legitimate actions of the legislative branch, the advisors to the President have failed to perform their constitutional responsibiilities.

Senator Cochran?

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM MISSISSIPPI

Senator COCHRAN. Thank you, Mr. Chairman. I think it is an important exercise of the authority of this committee to try to determine what our Government's policy is and should be with respect to incidents of this kind that we have witnessed.

Obviously some might classify it as a comedy of errors, but I don't think it's a laughing matter. I think it's a very serious problem that we have. We have had another incident which did not, as I understand it, affect the trade relationship, but another person from an Eastern-bloc country jumped ship in an American port, and I wonder how often this is happening and whether or not the

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American people and Members of Congress are fully advised about the total number of incidents of this kind.

I would be interested in knowing more about what we have done in previous episodes of this kind, and whether there have been efforts made by the executive branch to close the door and keep information from these incidents from reaching the public.

I'm curious about that; I think we have a right to know it because we do have a very important trade relationship with the Soviet Union. If this kind of thing is going to disrupt that relationship, we need to know that. We need to, I think, take steps to develop some ground rules that are consistent with U.S. interests, and then, as a Congress, help ensure that those ground rules are followed by the executive branch.

The CHAIRMAN. Yes, sir. Mr. Lantos, we will make you an ex officio member of this committee.

STATEMENT OF HON. TOM LANTOS, A REPRESENTATIVE IN CONGRESS FROM THE 11TH DISTRICT OF CALIFORNIA

Mr. LANTOS. I appreciate that very much, Mr. Chairman, Senator Cochran.

Just a few comments I would like to offer to bring you up to date, Mr. Chairman, on what is happening on the House side.

In the first place, let me tell you that, contrary to the attempts of some to paint you as the sole crusader on this issue, there is no doubt in my mind that you, on this issue, represent the overwhelming majority of the sentiments of the House and of the American people. My wife and I just came back this morning from California, from my district. I can tell you there was overwhelming support for the position that you represent on this issue.

The House Foreign Affairs Committee on Thursday had approved the resolution. I would like to take a moment to give the essence of the resolution. I will have the privilege this afternoon to floor-manage this resolution. There is no doubt in my mind that the full body will adopt the resolution.

It is the sense of the House of Representatives that the President should protect the human rights of Miroslav Medvid by taking every feasible step to accord to him all the rights due to him as a possible defector. The President should ensure that Miroslav Medvid is afforded an additional interview on American soil with an interpreter fluent in Ukrainian, in an environment free of fear or intimidation, so that Mr. Medvid may freely decide whether to restate and have granted his initial request for asylum and Miroslav Medvid is provided an opportunity to meet with relatives who live in the United States.

And the President should pursue an active and impartial investigation into the facts and circumstances of the Medvid case so that no similar tragic and improper mishandling of a political asylum case will ever again cast its shadow on our principles of liberty and freedom.

Mr. Chairman, on Thursday I had the responsibility of chairing a 3-hour hearing on this issue. And one of my witnesses was Seaman Kodirka, who 15 years ago went through an almost identical outrage. He spent 4 years in the Gulag, and had it not been for the fortunate chance happening that he had the right to emigrate to this country because of American parentage, he would probably still be there.

We all know what happened in the Medvid case. He defected, he asked for political asylum. We had Dr. Irene Paddock, the inter-

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preter, testify before our committee, Mr. Chairman, that twice she asked him "Do you want to stay in the United States?" and twice he said "Yes."

Which really brings us to the first mystery in this case.

The Border Patrol people, who followed procedure up to that point, calling an INS-authorized interpreter in New York, conducting a 40-minute interview with her, told her that they would get back to her in the morning, suddenly changed their minds and ordered him put back on the ship.

As you well know, Mr. Chairman, they did so the second time, and he again made his break for freedom.

Now, the State Department and the Commissioner of the INS, testifying before our committee, tried to make a very clearcut delineation between the admitted mistakes in the first instance and what they called their proper handling at the end.

It is my contention, Mr. Chairman, Senator Cochran, that the State Department made a very fatal, unforgivable mistake in the final handling of this matter.

As a matter of fact, there are inconsistencies that boggle the mind. As you mentioned, Mr. Chairman, a minute ago, our Government claims that it was prepared to use force to get him off the ship.

Well, if we were prepared to use force, and if the State Department said there was no time limit on how long we could hold Seaman Medvid, why didn't we keep him here in a nonthreatening quiet environment where he would have had access to his own relatives, to individuals who are Ukrainian speaking, where he would have had a chance to think through all of his actions. The ship would not have had to be kept here. We are not interested in the ship. Seaman Medvid should have been kept here for 10 days to 2 weeks. And if he still wanted to return, which I greatly doubt, he could have been flown back to Moscow long before the opening of the summit.

It seems to me that what we have done was not only perhaps fatally damage the prospect of this young man for life, but we have sent a message around the globe with respect to the changing image of the Statue of Liberty. We just celebrated the 110th anniversary of the Statue of Liberty which is a very profound message for all of us who were born in another country and came to this country because it is the land of freedom.

The message of the Medvid case is another mysterious unattractive message. I strongly urge you, Mr. Chairman, and your distinguished committee to pursue this matter.

The famous author of this statement of the State Department in this whole case was that the case is closed; that they would like to see it closed, Mr. Chairman, but the Congress of the United States and the American people do not believe the case is closed and will not be closed until we know all of the facts.

Thank you very much.

The CHAIRMAN. Thank you very much.

Now we call as witnesses a couple of men who, to my knowledge, have never been witnesses before this committee. They may never again, we do not know about that. But I am very proud of both of them. The deputy counsel of the Senate Committee on Agriculture,

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Nutrition, and Forestry, Terrance J. Wear. Why do you not sit by Senator Cochran over there. And David Sullivan, who is a member of my personal staff. David is the football player I told some of the folks about last Friday. I figured that he could bulldoze his way up that gangplank if need be, but he did not need that. So have a seat.

I just want you to know that I am proud of you, and I followed your activities very closely while you were gone. If you made a mistake, it was not perceptible to me.

Mr. WEAR. Thank you very much, Mr. Chairman. We very much appreciate your comments.

The CHAIRMAN. Before you begin, I have a couple of documents I want to make a matter of record. One is a news release from the committee of last Thursday, and also a news release for the record that on Thursday, this past week, the Senate passed by voice vote the following resolution.[1]

Did you pass a resolution in the House?

Mr. LANTOS. We passed it in the committee. They are going to pass it on the floor this afternoon.

The CHAIRMAN. I recommend this language to you. It was offered by the distinguished Senator from Georgia, as I recall, Mr. Mattingly, and says at the appropriate place in the bill add the following:

> The Senate finds that the United States has historically been a haven for those seeking refuge from oppression, and recent events have focused on the procedure used in handling cases involving foreign merchant seamen who might seek political asylum. And serious questions have arisen about the application of those procedures by the INS in the case of Miroslav Medvid. Therefore, it is the sense of the Senate that all legal and legitimate means should be taken by the U.S. Government in arriving at a just resolution of this incident.

Now, what happened, Senator Cochran, my distinguished friend, is that the State Department thumbed its nose at the legislative branch. It is obvious that the executive branch refused to honor this resolution as well as the subpoena of this comittee.

Now, Terry, we will be glad to hear from you, sir.

STATEMENTS OF TERRANCE J. WEAR, DEPUTY COUNSEL, SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, AND DAVID SULLIVAN, LEGISLATIVE ASSISTANT, OFFICE OF SENATOR JESSE HELMS

Mr. WEAR. Thank you, Mr. Chairman. Good morning, Senator Cochran, Congressman Lantos. We are very pleased to appear here today to report to you on the details of the service of the congressional subpoena requiring the appearance of Mr. Miroslav Medvid before the committee this morning.

Mr. Chairman, I have prepared a summary of those facts and circumstances. If I may, I would ask that that be made a part of the record, and I will not go through it again.[2]

The CHAIRMAN. Without objection, it is so ordered.

Mr. WEAR. Mr. Chairman, I have here a copy of the subpoena that was served. As you know, when the committee authorized the

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[1] See p. 31 for the prepared statement of Senator Helms and pp. 33–41 for reprints of the documents referred to by Senator Helms.

[2] See p. 41 for the prepared statement of Mr. Wear and p. 44 for a memorandum from Mr. Sullivan.

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issuance of the subpoena, the staff had it translated into Ukranian and into Russian to make sure that there would be no confusion over its meaning when it was served. And if I may, sir, I would ask that it be made a part of the record.[1]

The CHAIRMAN. Without objection.

Mr. WEAR. By way of background, Mr. Chairman, I would like to indicate for the record that I have had substantial experience in the service of subpoenas and other legal documents. Prior to joining the committee staff, I spent 6 years in the practice of law, specializing in civil and criminal litigation. And on several occasions during that period, it was necessary for me to supervise others who were serving subpoenas or other legal papers or to physically go out and locate and serve defendants and witnesses who were, for one reason or another, in hiding or who had previously avoided the service of subpoenas or other legal process. I am also generally familiar with merchant shipping practices and the merchant marine industry.

After issuance of the subpoena was authorized by the committee, Mr. Sullivan and myself departed for New Orleans for purposes of serving it. When we arrived in New Orleans, however, we were confronted with a problem that we did not anticipate. When we were here in Washington, I had been advised that I could call on the Customs Service for whatever assistance I needed in boarding the *Marshal Konev,* including the accompaniment of Customs Officials when I boarded the vessel. When I arrived in New Orleans, however, I was advised by the Customs Official in charge that he had been authorized to drive me to the ship and wait there while I delivered the subpoena, but neither he nor his men were authorized to board the vessel with me.

The Customs people also initially attempted to take us directly to the ship. And when I perceived that that was their intention, I advised them that Mr. Sullivan and I were not ready to go to the ship yet because we needed to make arrangements for a Russian interpreter, a Ukrainian interpreter, and for two eyewitnesses who had seen Mr. Medvid shortly after he left the *Marshal Konev* and came ashore. We wanted the eyewitnesses and the interpreters to go with us to be sure that we could identify the right man and that we could converse with him and with the Soviet officials onboard the ship.

It took us about 3 or 4 hours to make arrangements to bring these people together, but we did bring in Mr. Joseph Wyman and Mr. Wayne Wyman, who were the people who had initially encountered Mr. Medvid, and a Russian language translator and a Ukrainian language translator. After having gathered the people together, we then departed for the ship, which was located at the Cargill dock and elevator in the town of Reserve, LA.

Now, en route to the ship, we made a rendezvous, if you will, with the local sheriff, the sheriff of that particular parish in which the ship was located. He had indicated that he and his senior deputies were willing to assist us. Since it was not clear that we were going to get support from anyone else, we accepted his offer, after

[1] See pp. 38–40 for a reproduction of the above-referred-to subpoenas.

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talking with him in detail about the purpose of this trip to the ship.

After reaching the ship, Mr. Sullivan, myself, and the other members of our boarding party walked down the dock to the ship's gangway. At the gangway, we met two young men in blue working uniforms who were standing guard. I introduced myself and Mr. Sullivan introduced himself. We indicated who we represented and that we wished to go onboard the ship to see the ship's captain. One of the young men stated in response that two of us would be allowed to board the ship to meet with the captain, but that the others would have to remain on the dock. After some additional negotiations, the young man agreed to allow three persons to board the ship, myself, Mr. Sullivan, and the Russian language interpreter.

We then boarded the ship and met the captain. The captain took us to his stateroom and we began to converse with him through the Russian interpreter.

After introducing ourselves and having been introduced to the ship's first mate and chief engineer, who had also entered the captain's cabin at about the time that we arrived there, I indicated to the captain that I had some official papers for Mr. Medvid and asked to see him.

The captain stated in reply that he had been given explicit orders by the Soviet Government not to permit any outside contact with Mr. Medvid until representatives from the Soviet Embassy in Washington had arrived. He also stated that these officials would reach the ship on Friday afternoon at approximately 2:30 p.m.

We continued to ask to meet with Mr. Medvid. Each time, however, the captain insisted that he had to obey his orders and that such a meeting was not possible at that time. When we asked about Mr. Medvid's condition, the captain replied that Mr. Medvid was very nervous, but did not get more specific.

During the course of our conversations with the captain, he stated that he would neither discuss nor accept the subpoena that I had until the Soviet Embassy officials had arrived. I explained to the captain the purpose of the subpoena and asked whether I and my party would be permitted to board the ship the next day to meet and talk with the captain and the Embassy officials. In response to my request, the captain assured me that we would be able to reboard the vessel.

During the course of our conversations with the ship's captain that evening, I noticed that he was smoking some U.S. cigarettes. He had a pack on the desk that he would open and close, he took a cigarette out, he smoked one, and we noticed the brand. And so when we were ready to leave, I indicated to the captain that we had purchased some cigarettes for him and that I would bring them back the next day when we came to talk with him and the Embassy officials. We then left the ship and returned to New Orleans.

On Friday morning, at our hotel with Mr. Sullivan and two other witnesses observing me, I opened the end portions of each of two cartons of cigarettes that had been previously purchased, folded up two copies of the subpoena so that a folded copy would slip into the carton between the two rows of cigarettes. I then slid the folded

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subpoena into the carton of cigarettes and further pushed it on down out of sight with a plastic card. I then sealed each carton up from the inside so that one could not tell that either carton had been opened.

Now I put a copy of the subpoena into each carton of cigarettes for a purpose which I will get to later. I fininshed resealing the two cartons and I indicated to the people in the room that I intended to present these cartons of cigarettes to the captain that afternoon.

At approximately noon on November 8, 1985, we were advised by officials at the Cargill elevator that two Soviet officials were due to arrive at the *Marshal Konev* at approximately 12:30 p.m. We then hurriedly assembled the boarding party, again consisting of myself, Mr. Sullivan, Mr. Joseph Wyman and his nephew Wayne, and our two interpreters; one for the Russian language and one for the Ukrainian language, and two customs officials. The customs officials accompanied our party on the return trip to the grain elevator at Reserve. En route to Reserve, LA, we again met with the sheriff and his deputies, transferred our party to the sheriff's cars, and went on in the sheriff's automobiles to the Cargill elevator and dock.

When our party arrived at the ship, I was informed by the Soviet official—I am not sure I can pronounce his name, Mr. Chairman, I believe it is Yevgeniy Vtyurin, who is the Second Secretary and Consul at the Soviet Embassy, that neither myself nor any member of my party would be allowed to board the ship. Mr. Vtyurin also stated that he would not discuss the matter of the subpoena at all until he had an opportunity to speak by telephone to the Soviet Ambassador, Mr. Dobrynin. He then asked me if I could arrange to obtain a telephone for his use.

Now, in response to his request, I asked for and received permission to use the telephones in the Cargill business office. Mr. Sullivan, myself, our Russian interpreter, Mr. Vtyurin, and the captain of the *Marshal Konev* then went to the Cargill office; where Mr. Vtyurin and the captain spent approximately 35 minutes on the telephone communicating with their Embassy in Washington.

After completing their telephone calls, Mr. Vtyurin suggested that we all go out for lunch, since he had not had lunch yet. Now, I was concerned that we were not going to get any business done at all, and so I suggested that we remain at the Cargill offices and have some sandwiches sent in and that we begin our discussions while we were waiting for the food. Mr. Vtyurin agreed to that suggestion, and we began our discussions in the conference room at the Cargill offices.

Now, I indicated when we began our discussions at the Cargill offices that, while I knew that Mr. Vtyurin and the captain had some knowledge of why we were there, I wanted to be sure that they understood what the purpose of the subpoena was and what it required, and what the consequences of noncompliance were, and I asked them for an opportunity to explain exactly what our position was.

I explained that the subpoena required the appearance of Mr. Medvid at 9:30 a.m. this morning in this room to testify on issues under the jurisdiction of the committee, such as the grading and exportation of grain and the role played by Mr. Medvid, his captain

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and the Soviet Government in that activity. I also mentioned that, under existing law in the United States, the U.S. Customs Service would not clear the *Marshal Konev* to leave port while the subpoena was outstanding. I also advised them that officials of the State Department could override this decision on the part of the U.S. Customs Service, that is the clearing of the vessel, if such action was deemed to be in the national interest of the United States.

After having taken several minutes to complete this explanation in greater detail than I am giving here and having it translated thought by thought for the benefit of Mr. Vtyurin and the captain, I asked the Russian interpreter to read the Russian translation of the subpoena which I pointed out to you earlier. Both Mr. Vtyurin and the captain listened to the text of the subpoena being read in Russian, and Mr. Vtyurin raised questions about a portion of the translation, stating that he wasn't sure that a portion of it was exactly correct. He questioned my interpreter for approximately 2 minutes on that point.

After the contents of the subpoena had been read, we had a long discussion about the three branches of government in the United States and what their purposes were. Mr. Vtyurin stated that the U.S. State Department had found that Mr. Medvid should be returned to his ship and that the State Department's decision should be binding on the other branches of government. I pointed out to him that each branch of government in the United States is coequal and that decisions made by the U.S. State Department do not limit the right or the ability of Congress to examine and investigate the underlying facts and circumstances surrounding Mr. Medvid's defection and subsequent return to the ship, and the impact of this action on the international trading of grain. Mr. Vtyurin stated, half in jest, that surely things would be less confusing in the United States if we had a central committee similar to the one in the Soviet Union that would simply decide an issue and tell everybody else what the decision was. In response, I pointed out that in this country, everybody has a say in the decision, and that the decision cannot be made until everyone has had a chance to voice their opinion and to influence the decision.

The CHAIRMAN. Terry, you ought to have told him that the reason so many people were trying to flee the Soviet Union is because they have a central committee. [Laughter.]

Mr. WEAR. Well, I did not want to alienate him at that point, Mr. Chairman.

The CHAIRMAN. He was born alienated. [Laughter.]

Mr. WEAR. At approximately 4 p.m. in the afternoon, Mr. Vtyurin placed another telephone call to his Embassy. When he returned after completing that call, and I might say that when he went to make that call, I again asked him to be sure to explain what our position was to the Soviet Ambassador and to others in his Embassy. When he returned after completing that call, he stated that he had informed the Soviet Consular General of the explanations of the American side, as he put it, in connection with the subpoena for Mr. Medvid's testimony. He then stated the following, and these are direct quotes:

> Mr. Medvid doesn't want to see you, he doesn't want to talk to you, and he won't leave the ship under any circumstances.

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The U.S. State Department determined that Mr. Medvid wanted to go back to the Soviet Union of his own free will.

All discussions and contacts concerning this matter must be carried out through the U.S. State Department.

Last,

The Soviet Government hopes the *Marshal Konev* will be allowed to leave the United States when it has finished loading its cargo.

In response to his statement, I explained to both him and the captain that the purpose of the subpoena was to provide notice of the time, place, and other particulars of the hearing, and that this notice had been effectively communicated to both him and the captain through our discussion of the contents of the subpoena and the reading of the subpoena to them in Russian.

Mr. Vtyurin stated that he and the captain had accepted my explanations of the subpoena but that neither he nor the captain had physically accepted the document. He did concede that the subpoena was available to them, should they have chosen to physically accept it, and he also stated that he knew that we wished to board the *Marshal Konev* to deliver the subpoena to Mr. Medvid, but that we would not be allowed to do so.

After approximately 2½ hours of discussions on the matters that I have mentioned briefly here this morning, Mr. Sullivan, myself, Mr. Vtyurin, the Russian interpreter, and the captain returned to the dock at which the *Marshal Konev* was moored. We thanked Mr. Vtyurin and the captain for their time during the course of this meeting, and as my party was preparing to leave, at virtually the last minute, I handed the captain a small paper bag containing the two cartons of cigarettes protruding from the end of the bag, saying: "These are for you, captain."

At that point Mr. Vtyurin started to ask whether the bag contained a subpoena, but he was having difficulty pronouncing the word "subpoena," and before he could finish his question both I and Mr. Sullivan cut him off by saying, "Cigarettes, cigarettes," and not responding further. Mr. Vtyurin and the captain then laughed about the matter and the captain carried the cigarettes up the gangway and onto the ship.

In addition, Mr. Chairman, a third method of serving the subpoena was employed. On Saturday morning I contacted Mr. Thomas Richard, who is the vessel operations officer for the Universal Shipping Agencies, Inc. and served on him a copy of the subpoena addressed to Miroslav Medvid. This company, Universal Shipping Agencies, Inc., is the local shipping agent for the *Marshal Konev* in the Reserve, LA, area. One function of a shipping agent is to accept service of process on behalf of the vessel and its crew.

Mr. Chairman, I believe that this statement, as I have related it to you here this morning, is a true and correct summary of our efforts to serve the subpoena addressed to Miroslav Medvid and issued by the Senate Committee on Agriculture, Nutrition, and Forestry.

We were told during the course of our activities that Mr. Medvid knew that we were there and why we were there. We were also told that the officials on board the *Marshal Konev* had effective control of him and that they were not going to permit us to see him. The officials on board the ship knew what the contents and

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particulars of the subpoena were through our discussions and through the copies which they received without their knowledge. And, Mr. Chairman, I submit to you that the service of that subpoena was effective and that the subpoena is valid, and that there was absolutely no reason for not honoring it.

Thank you, Mr. Chairman.

The CHAIRMAN. David, do you have anything to add to the statement?

Mr. SULLIVAN. Mr. Chairman, only very little. I would start by quoting from Vice President George Bush, who was quoted in the Washington Times today as having said yesterday in New Orleans that this whole thing "doesn't look good. My heart is troubled by it."

I think that is a good summary of this case: It doesn't look good, and it's very troubling to me personally and I am sure to this committee.

I would only like to address the issue of extraterritoriality for the ship.

On Friday, November 8, 1985, the Soviet diplomat, Yevgeniy Vtyurin, stated to Mr. Wear and myself that the Soviet ship *Marshal Konev* was Soviet territory and as such was totally immune from U.S. jurisdiction.

At the time I thought that Mr. Vtyurin was merely saying this for rhetorical effect to try to explain his attempts to deny that the subpoena for Seaman Medvid had, in fact, been legally served, as was just certified.

I now believe, however, that Diplomat Yevgeniy Vtyurin may have had some reason for believing this to be true. It is possible that there was a secret agreement between the State Department and the Soviet Embassy in Washington at some point during this whole episode to grant the Soviet vessel *Marshal Konev* extraterritorial status.

If this is true, it could also explain why the *Marshal Konev*'s captain was reportedly reprimanded for allowing American officials to board the ship, and why I was refused and Mr. Wear was refused permission to board the ship the second time by the Soviet diplomat.

It was reported to me on Friday, November 8, 1985, that President Reagan told the congressional leadership that morning that he wanted Seaman Medvid to have a second interview with U.S. authorities and that he, President Reagan, would not sacrifice Seaman Medvid to the summit, for the summit.

Now, on the morning of Saturday, November 9, 1985, it has been reported to us that Deputy National Security Affairs Advisor, Admiral John Poindexter, ordered U.S. Department of Agriculture grain inspectors off the *Marshal Konev* in order to expedite its departure.

I tried twice yesterday to contact Admiral Poindexter in order to determine why he helped the Soviets and thwarted the President's wishes, but Admiral Poindexter would not return my calls.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Do you have a picture of Medvid?

Mr. WEAR. Yes, Mr. Chairman. During the course of our efforts in New Orleans, we received a photograph of Seaman Medvid from

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the Immigration and Naturalization Service. This was taken by the Immigration and Naturalization Service during the course of the initial interview or examination of Seaman Medvid.

I also showed this photograph, Mr. Chairman, to Messrs. Joseph and Wayne Wyman, the individual witnesses who first encountered Mr. Medvid, and they have confirmed that the man in the photograph is indeed Seaman Medvid.

[The photograph is viewed by the chairman and passed to Congressman Lantos.]

The CHAIRMAN. Nice-looking boy. Congressman, would you like to see him?

Mr. LANTOS. Thank you.

The CHAIRMAN. At this point, to complete the record, I would like to call Dr. James P. Lucier, who is chief of our legislative staff, who was active throughout this.

Jim, go down and sit by Dave Sullivan.

STATEMENT OF JAMES P. LUCIER, LEGISLATIVE DIRECTOR, OFFICE OF SENATOR JESSE HELMS

Dr. LUCIER. Mr. Chairman, my name is James P. Lucier. I have been an employee of the U.S. Senate since 1967. As you know, I have been your chief legislative assistant since 1973.

The question has arisen as to whether the executive branch was officially put on notice about the action of the committee in issuing the subpoena. And therefore I wish to state the following for the record:

The subpoena was signed in the Senate lobby approximately at 2 p.m. on Thursday, November 7, 1985. Shortly thereafter, my colleagues, Messrs. Wear and Sullivan, left to go to the airport for their flight to New Orleans.

About 3 p.m., under instructions from the chairman, I took copies of the subpoena out to the Senate reception room. The two relevant agencies that could have cooperated directly with the enforcement of the subpoena are the U.S. Customs Service and the Immigration and Naturalization Service.

In the lobby of the Senate I gave a copy to Mr. Richard Miller, Associate Commissioner of Customs for Congressional Liaison and Public Information, putting it into his hands and discussing the significance of the action.

A few minutes later I encountered Mr. Phillip D. Brady, the Acting Assistant Attorney General, Office of Legislative and Governmental Affairs.

Mr. Brady, incidentally, was formerly congressional liaison for the Immigration Service and is highly experienced and knowledgeable about immigration affairs.

At that time, I put a copy of the subpoena into his hands, thus putting the Department of Justice and INS, its component, on notice that an alien was wanted for questioning before the committee, that the alien should not be allowed to depart under the Code of Federal Regulations a8 (CFR) 215.

Thank you, Mr. Chairman.

The CHAIRMAN. I have two or three questions. Mr. Wear, it's very clear that the Customs Service changed its position between

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your departure from Washington and your arrival in Louisiana, is that correct?

Mr. WEAR. Yes, sir.

The CHAIRMAN. As a matter of fact, before you departed or shortly thereafter, I was in conversation in the Senate Cloakroom with the distinguished Commissioner, and at that time there had not been a reversal of his intent to comply with the law and his responsibility—a reversal by the U.S. State Department. I hope I won't get him into any problem, but he asserted to me at the time that it was their intent not to clear that ship until the subpoena had been disposed of, one way or the other.

I don't frequently use the word "dismayed," but I am dismayed at the conduct of the U.S. State Department and some others in this episode.

Terry, I've got to ask you, what kind of cigarettes were they?

Mr. LANTOS. Trojan Horse brand.

Mr. WEAR. Mr. Chairman, the captain was smoking Marlboro's, and that's what we got for him.

The CHAIRMAN. So he was a Marlboro man. Well, I guess he will be smoking Subpoena Supremes from now on. [Laughter.]

Did you make it clear in your statement who translated the subpoena into Ukrainian and into Russian?

Mr. WEAR. Mr. Chairman, the copies of the subpoena in Ukrainian and Russian have a certification at the bottom of each copy showing the name of the individual, certifying that the individual is thoroughly familiar with the language, and that the translation is a true and complete translation of the attached English document.

And that statement has been notarized by a notary public, Mr. Chairman.

The CHAIRMAN. Who is this individual, just for the record?

Mr. WEAR. The individual who made the Ukrainian translation is Mr. Andrew V. Fessenko; the individual who translated the Russian version is R. Sheila Penners.

The CHAIRMAN. And where are these individuals employed?

Mr. WEAR. Both of these individuals, Mr. Chairman, are employed by the Congressional Research Service of the Library of Congress.

The CHAIRMAN. That is the point that I wanted to make clear.

Now, you commented in your statement about the support that you received from the Customs Service. What sort of support, if any, did you receive from other Federal agencies?

Mr. WEAR. Mr. Chairman, we also contacted the U.S. Coast Guard to attempt to get support for boarding the vessel.

On Thursday evening, I called the duty office at what is called the Group Headquarters for the Coast Guard in New Orleans, and spoke with the duty officer. The duty officer indicated to me that there would be no problem in supplying a Coast Guard officer to go with us to serve this subpoena. He wasn't sure he could locate someone at that hour of the evening, but his only problem was in physically locating someone to go. There wasn't any other problem.

Later on in the evening, I received a call back—or actually I did not receive a call back, I called them again to see where they were

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insofar as locating someone. The duty officer indicated that he had referred the question to Washington and it was being reviewed.

The next day, Mr. Chairman, I contacted the Coast Guard captain who is in charge of the Group Headquarters, and he indicated the question of whether or not a Coast Guard officer could accompany us was still under review in Washington. I indicated to him that one of the things that I intended to do when I got back to Washington was to comment on the effectiveness or ineffectiveness of the support, and would he please contact the headquarters and get me an answer one way or another.

Unfortunately, Mr. Chairman, I did not get an answer; I didn't get any support either.

On Thursday evening, when it became clear to me that we weren't going to get any meaningful support, Mr. Sullivan contacted the sheriff of St. John the Baptist Parish, Sheriff Lloyd Johnson, and talked with him about our situation, and asked whether or not they could give us any support. The sheriff indicated that he would help us. We impressed on him the seriousness of this matter, and that we wanted to be absolutely sure that the persons from his department who assisted us knew exactly what we wanted, would do exactly what we asked, and would do nothing else. The sheriff understood that and brought his officers in from off duty. His officers accompanied us to the ship on Thursday evening, and again accompanied us to the ship on Friday.

Mr. Chairman, I can't say enough about the sheriff's support.

The CHAIRMAN. Thank you very much. Senator Cochran?

Senator COCHRAN. I am curious, Mr. Chairman, about a statement that Mr. Lucier made with reference to the authority of the State Department or other Federal agencies to cooperate with the committee in assuring that an alien not be permitted to depart the continental United States if he is subject to a subpoena by the Congress. You mentioned that this would be covered by relevant Federal regulations.

Dr. LUCIER. That is correct, sir.

Senator COCHRAN. What regulations are they? I think we ought to make them a part of the record, if we can.[1]

Dr. LUCIER. It's in the Code of Federal Regulations, 8 CFR part 215.3, I will have to check the subparagraph. But it states very clearly that any alien who is wanted for investigation before a Federal, State, or local official agency should not be allowed to depart. At 8 CFR 215.2, it states that any immigration officer who is aware that this alien is wanted is required to detain him temporarily and thereafter serve him with official written notice he is not allowed to depart until notified of revocation of the order.

Senator COCHRAN. The agency having the responsibility to carry out this regulation is the Immigration and Naturalization Service or the Border Patrol, or who?

Dr. LUCIER. The Immigration Service, of which the Border Patrol is a component.

Senator COCHRAN. Was there any effort, in addition to discussing with the congressional liaison person you identified as meeting—

[1] See pp. 17–22 for a reprint of Part 215 of the Code of Federal Regulations.

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any effort made in addition to that meeting to bring this to the attention of the head of the Service or any other appropriate official of the agency?

Dr. LUCIER. Not of the Immigration Service since Mr. Brady is the designated channel. However, as the chairman has already indicated, he had a conference with the Commissioner of Customs himself with regard to Customs enforcement.

Senator COCHRAN. I think you ought to put a copy of that regulation in the record, Mr. Chairman.

The CHAIRMAN. I thoroughly agree, and it is so ordered.

Mr. WEAR. Senator Cochran, if I might also respond on that point, the officer in charge for the Customs Service in New Orleans was served with a copy of this subpoena at the same time that it was served on the Soviet ship. Indeed, I believe we gave him a copy of that subpoena on Thursday evening when we initially arrived.

So I don't think there's any question about the fact that they had notice of the subpoena; the issue is what they intended to do about it.

The section of the Code of Federal Regulations that Dr. Lucier refers to is 8 Code of Federal Regulations part 215, appearing at pages 138 through 142 of Title 8 of the Code of Federal Regulations.

Senator COCHRAN. As I understand the chairman, a copy of this will be made a part of the record.

I think we ought to have an understanding with the executive branch about the respective rights and obligations under situations like this in the future.

Isn't it true that the Congress can enforce its subpoenas? Does it have the power, Dr. Lucier, to enforce its subpoenas?

Dr. LUCIER. I would defer to counsel on that matter.

Mr. WEAR. Senator Cochran, the Congress can take steps to enforce its subpoena. Under current law, the committee, the entity that issued that subpoena, must issue a report to the full Senate indicating the facts and circumstances surrounding the subpoena, and the facts surrounding the dishonoring of the subpoena. The Senate would then need to pass a resolution instructing Senate legal counsel to file an action in Federal District Court in the District of Columbia to enforce that subpoena.

I believe there is also another method pursuant to which the Senate can attempt to enforce its subpoena not using the courts, but I have not had an opportunity to research that at this point, sir.

The CHAIRMAN. But all that was rendered nugatory by the Senate's not being in session and by the threat of some Senators to filibuster such a resolution if it came to the floor.

So as a practical effect the State Department and others used that set of circumstances to make sure that Mr. Medvid, the young man, was not given asylum, and was put back on the ship, or not allowed to be interrogated further, as the President of the United States himself said—when was it, Friday morning—he said this ought to be done.

I thoroughly agree with Senator Cochran—it's been referred to as a "comedy of errors," it's a comedy—well, I'll not complete the sentence—it's a tragedy.

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Further questions? We've got to move along because we have a limitation on time.

Do you have any questions you'd like to ask, Congressman?

Mr. LANTOS. I just have one question, if I may, Mr. Chairman.

The CHAIRMAN. Very well.

Mr. LANTOS. It is so uncharacteristic of Soviet officials to be jovial and sociable under such circumstances; you say they suggested lunch, they made references to the United States not having a central committee which would make things so much easier.

Did you get the impression that they already knew that the State Department had overruled the subpoena, and that they were very comfortable about playing this cat-and-mouse game with you, Mr. Wear?

Mr. WEAR. Congressman Lantos, it's clear that the Soviet official wasn't under any stress at all in this matter. He was very, very cordial. I don't know whether he had any understanding with the State Department or not—he didn't say so.

But he certainly didn't seem to be particularly concerned about our being there or about any difficulty arising out of this matter.

Mr. LANTOS. He knew what the outcome would be basically.

Mr. WEAR. He may have, sir.

Mr. LANTOS. Thank you, Mr. Chairman.

The CHAIRMAN. We have one further witness, to whom I have already alluded. His name is Dr. William E. O'Malley. It might be well for you three gentlemen to remain where you are and have Dr. O'Malley come here and sit, if you will.

Dr. O'Malley, as I have indicated earlier, is a distinguished neuropsychiatrist and a pharmacologist. Therefore he is an expert both in the chemistry of the brain, as I understand it, and the pharmacology of drugs. He has had a distinguished career in both clinical practice and research.

Doctor, we appreciate your coming this morning, and we would welcome your comments.

Dr. O'MALLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Before you proceed, let the Chair note that Senator Dixon and Senator McConnell have attended the hearing this morning and have filed statements with the court reporter, and, without objection, they will be made a part of the proceedings.[1]

[The following material was received for the record:]

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

215.1 Definitions.
215.2 Authority of departure-control officer to prevent alien's departure from the United States.
215.3 Alien whose departure is deemed prejudicial to the interests of the United States.
215.4 Procedure in case of alien prevented from departing from the United States.
215.5 Hearing procedure before special inquiry officer.
215.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
215.7 Instructions from the Administrator required in certain cases.

[1] See p. 33 for the prepared statements of Senators Dixon and McConnell.

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AUTHORITY. Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

SOURCE. 45 FR 65516, Oct. 3, 1980, unless otherwise noted.

§ 215.1 Definitions.

For the purpose of this part:

(a) The term "alien" means any person who is not a citizen or national of the United States.

(b) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(c) The term "regional commissioner" means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.

(d) The term "district director" means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.

(e) The term "United States" means the several States, the District of Columbia, the Canal Zone, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

(f) The term "continental United States" means the District of Columbia and the several States, except Alaska and Hawaii.

(g) The term "geographical part of the United States" means: (1) The continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Territory of the Pacific Islands.

(h) The term "depart from the United States" means depart by land, water, or air: (1) From the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided*, That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term "departure-control officer" means any immigration officer as defined in the regulations of the Immigration and Naturalization Service who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term "port of departure" means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, Swains Islands, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.

(k) The term "special inquiry officer" shall have the meaning ascribed thereto in section 101(b)(4) of the Immigration and Nationality Act.

§ 215.2 Authority of departure-control officer to prevent alien's departure from the United States.

(a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 215.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 215.4. In the case of an enemy alien, the writ-

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ten order preventing departure shall become final on the date of its service upon the alien.

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer may permit certain other persons, including officials of the Department of State and interpreters, to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to the enforcement of this requirement, take possession of the alien's passport or other travel document.

§ 215.3 Aliens whose departure is deemed prejudicial to the interests of the United States.

The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States.

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparation, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he has complied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided,*

That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien, where doubt exists whether such alien is departing or seeking to depart from the United States voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceedings.

(k) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (j), inclusive, of this section, but which involves circumstances of a

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similar character rendering the alien's departure prejudicial to the interests of the United States.

§ 215.4 Procedure in case of alien prevented from departing from the United States.

(a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of § 215.2, may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien. The notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

(b) Every alien for whom a hearing has been scheduled under paragraph (a) of this section shall be entitled: (1) To appear in person before the special inquiry officer, (2) to be represented by counsel of his own choice, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances, upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the authority to: (1) Administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, Executive orders, proclamations, and regulations.

§ 215.5 Hearing procedure before special inquiry officer.

(a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 215.4.

(2) The special inquiry officer shall enter of record: (i) A copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided*, That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

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(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend: (1) That the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pertinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision shall state that such information was considered. A copy of the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Administrator of the Bureau of Security and Consular Affairs referred to in section 104(b) of the Immigration and Nationality Act, or such other officers of the Department of State as he may designate, after consultation with the Commissioner, or such other officers of the Immigration and Naturalization Service as he may designate, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Administrator specifically requests the Commissioner to prevent the departure of a particular alien or of a group of aliens, the Commissioner shall not permit the departure of such alien or aliens until he has consulted with the Administrator.

(f) In any case arising under §§ 215.1 to 215.7, the Administrator shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any action taken or proposed.

§ 215.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.

(a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Administrator of the Bureau of Security and Consular Affairs and the Commissioner, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be prevented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§ 215.4 and 215.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or information of a confidential or a security nature which he deems pertinent.

§ 215.7 Instructions from the Administrator required in certain cases.

In the absence of appropriate instructions from the Administrator of the Bureau of Security and Consular Affairs, departure-control officers shall not exercise the authority conferred by § 215.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101(a)(15) (A) or (G) of

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the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11(3), 11(4), or 11(5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided*, That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by § 215.2 pending the outcome of consultation with the Administrator, which shall be undertaken immediately. In all cases arising under this section, the decision of the Administrator shall be controlling: *Provided*, That any decision to prevent the departure of an alien shall be based upon a hearing and record as prescribed in this part.

The CHAIRMAN. Now, Doctor, if you will proceed.

STATEMENT OF WILLIAM E. O'MALLEY, M.D., PH.D., NEUROPSYCHIATRIST, WATERFORD, VA

Dr. O'MALLEY. Mr. Chairman, Congressman Lantos, ladies and gentlemen. I would ask, because I understand there are constraints of time, that my full statement be included in the record, and I will take pains to abbreviate it.[1]

As Senator Helms said, my main work has been in neuropharmacology, a study of the effect of drugs on the brain and on the central nervous system.

I attended medical school here at the University of Maryland and at Georgetown University, and after spending 6 years at Georgetown in training I spent an additional 4 years as a researcher, a practitioner of neurology, doing research in neurology. I also spent 3 years at the National Institutes of Health in Bethesda, MD, and I've held various positions in the U.S. pharmaceutical industry, especially at Parke-Davis & Co. and at the pharmaceutical division of Dow Chemical Co.

The work which gave me the most satisfaction in my research career was as an independent researcher on L-dopa, a drug used in Parkinson's disease. This drug actually alters the chemical composition of the brain.

I mention this work because the concept of creating changes in the chemical composition of the human brain is relevant to the inquiry of this committee. My work with L-dopa was preceded by basic laboratory studies on the effect of a drug called chlorpromazine, its effect on brain tissue. This is the generic name for one of the two drugs which we now know the Soviets used on Mr. Medvid. In my clinical and laboratory experience I have found that these drugs profoundly alter emotions and thought processes by making changes in the actual chemical composition of the human brain. For this reason, these drugs are never used in the United States in the manner in which they were used on Mr. Medvid.

I was asked by this committee to review the report of the U.S. Air Force psychiatrist who examined Mr. Medvid for about 4 days after he sought asylum. I am here today to give you my clinical impressions of this report, and I must say at the outset that I was appalled by what I found when I carefully studied the document.

In my judgment it did not meet even the minimal standards, minimal professional standards, that one would expect of this kind of examination. However, I shall do my very best to be as objective

[1] See p. 44 for the prepared statement of Dr. O'Malley.

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as possible and to simply supply the facts and my opinions as to the unfortunate circumstances surrounding this.

Let me begin, because of time constraints, at the end of this case.

The Air Force psychiatrist who apparently was called in by the U.S. Department of State to examine Mr. Medvid made the basic bottomline conclusions after his examination that, No. 1, the reason that this 25-year-old sailor defected from the ship and sought political asylum was "based primarily on a rather impulsive decision, grabbing for the glitter and gusto, rather than any deep-rooted political or moral beliefs." That was the psychiatrist's first conclusion.

His second: Mr. Medvid showed "no evidence suggestive of any ongoing significant organic mental disorder, including substance-induced intoxication, that would have impaired his competency." This has to be translated into English. It means that there was no evidence that Miroslav Medvid was under the influence of drugs.

And the psychiatrist's third conclusion: Mr. Medvid was "clearly competent"—and I quote him: "clearly competent"—in making his decision to return to the Soviet Union.

All three of these conclusions must be strongly challenged because the data in the reports show that they are obviously in error.

Conclusion No. 1 is in error in asserting that Mr. Medvid acted impulsively. To the contrary, just the opposite is true, since Mr. Medvid premeditated his defection. According to eye-witness accounts, Mr. Medvid brought with him his watch and his papers carefully sealed in a watertight container, a jar, obviously prepared before his jump from the ship.

Also Mr. Medvid made not one impulsive decision to seek asylum, but rather four separate and consecutive decisions. The second decision was when he talked to the Ukrainian interpreter in New York via telephone and told her that he did indeed want asylum. The third decision was when he jumped from the launch returning him to the Soviet ship. The fourth decision was when he strongly resisted the ship security personnel who beat him up and tied him after he had swum the second time to the shore. He banged his head on the ground, according to the report.

These actions are characteristic of a highly determined, purposive personality, fulfilling a premeditated pattern, not someone acting impulsively.

Now a criticism of the second conclusion. The second conclusion, that Medvid was not under the influence of drugs, is definitely in error, because the Soviet doctor admitted that two potent neuroleptic-type drugs had been recently administered. He volunteered—and I don't think he intentionally volunteered—he volunteered the names of these drugs as Seduczine and Amonizine. And anyone needing the spelling can get a copy of the statement.

I checked the chemical formulas of these drugs in the Russian pharmacopeia, and they are the chemical equivalents to the U.S. drugs Haldol and Thorazine. There was a misspelling by the psychiatrist, but these are essentially the facts.

Both are strong mind-controlling neuroleptic drugs. The authoritative textbook, by Goodman & Gilman, goes further and describes Haldol, and I quote: "an extremely potent" major tranquilizer.

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These drugs are known as major tranquilizers to distinguish them from the better known and weaker minor tranquilizers such as Valium. The minor tranquilizers do not act in the same pharmacologic fashion. They are relatively mild in their effects. The major tranquilizers are known to have potent action and to remain present in the body for weeks. So it is very difficult to say this man was not under the influence of drugs. It is impossible to say that.

These major tranquilizers exert a strong effect, diminishing the will power and making the patient more susceptible to conditioning. They have an extremely potent taming effect; they will even tame wild animals. In the human they take away aggression and combativeness, and they produce a mental state of indifference along with serenity without simultaneously clouding the consciousness.

One of their benefits in the practice of medicine in the United States is that to the casual observer the personality of the patient appears unimpaired and normal. But the actual situation of emotional and thought processes are profoundly altered. Thus a psychotic or a violent individual can live in our ordinary society. Nevertheless, neurologically speaking, transmission between the brain cells in large discrete areas of the brain are effectively blocked or profoundly depressed.

It is a characteristic of these drugs that, to the untutored observer, the patient under their influence can appear normal, and act normally. A manic patient who is doing violence to himself or his surroundings can be subdued fairly quickly when these drugs are administered. But when unscrupulous Soviet practitioners give them to a person who is normal to begin with, the drugs can have a devastating effect on the personality of the patient.

It should be noted that the medical reports that did tell us that Mr. Medvid appeared sedated while still on the Soviet ship—however, the neuroleptic drugs are, strictly speaking, not sedatives. What happened in all probability, in my opinion, was that he had been given massive doses to subdue his will, and his captors had not yet adjusted the dosage so that he could appear normal. We may therefore hypothesize that by the time of the full examination on the U.S. ship, about 4 days later, and in the naval hospital, the dosage had been adjusted so that the patient appeared normal.

I find it significant that when Mr. Medvid spent the night at the naval hospital, the Soviet doctor stayed with him. It would be very easy to continue administering medication under these circumstances. It would not be surprising to me that a U.S. diplomat and other officials without medical training would be misled, but it is unforgivable I believe for medical professionals to have been misled.

Our standard pharmacological texts, such as Goodman & Gilman, describe the side effects of these drugs. These include nasal congestion and dry mouth. Blood pressure and temperature can be either elevated or depressed. The pulse is usually elevated.

In my review of the medical reports of Mr. Medvid, I noted that the patient "admits to nasal congestion * * * and slight sore throat"—I interpret that as a dry throat. For 2 or 3 days preceding the October 28 psychiatric examination these effects were present.

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At one point he is described as taking a long drink of water before answering a question. His temperature is recorded—and this is important—his temperature is recorded as 100.4 degrees, 1.8 degrees above normal. His blood pressure was 130 over 88; for a young athletic man who could swim the Mississippi twice this is rather on the high side. The pulse was reported as 96 on one physician's examination, 84 on another. You know that the normal pulse is 72, but for someone this athletic perhaps 65.

Taken together, these indices are highly suggestive that a drug was present in the patient's body and having an effect on him. When a drug gives side effects, a drug also gives its therapeutic effects. Yet for some unknown but seemingly, to me at least, inexcusable reason, neither urine nor blood samples were taken. These undoubtedly would have established beyond doubt that Mr. Medvid's body contained these highly potent drugs and their metabolites. Such tests are routinely done even on racehorses.

Moreover, neuroleptics are known to slow down brain wave activity, producing a higher quantity of alpha and theta waves in the EEG, yet no electroencephalograph, or EEG, was taken.

The CHAIRMAN. Doctor, forgive me, I must go vote, and there is no other Senator here. I am going to ask the staff director, Mr. George Dunlop, to preside, and you proceed and I will come right back.

Dr. O'MALLEY. Fine, Senator.

The CHAIRMAN. And, George, if the Doctor completes his statement while I am gone, I have some questions scribbled out here—if you will ask those for the record.

Mr. DUNLOP. Very well, Mr. Chairman.

The CHAIRMAN. All right, you may proceed, sir.

Dr. O'MALLEY. An EEG is a very simple test, it can be done in about an hour, and it costs about $40 or $50; it does not harm the patient, there was no reason not to check this to see whether the cerebral cortex—to see whether the brain was under the influence of drugs.

There is not even an indication in the record that an observation for nystagmus was taken. This takes about 20 seconds of a physical examination. Of the twelve cranial nerves, the nerves in the head, three regulate eye movement. Yet the only observation required in these medical exams was that the cranial nerves were "grossly normal." In medical terms this means that an overall superficial observation was made of the patient's face, without tests. This is positive evidence, in my opinion, that these simple tests were skimmed over and just not performed.

In short, once the Soviet doctor admitted that neuroleptics had been administered, all of these tests should have been done on a high priority basis.

The third conclusion of the psychiatrist, that Mr. Medvid was clearly competent, is certainly in error. The psychiatrist himself notes that Mr. Medvid was under mental duress as a result of threats to his parents, his "Mama and Papa." Moreover, a correct interpretation of the observations of the traumatized tissues strongly suggests that physical torture had been administered to Mr. Medvid.

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First of all, we know that Mr. Medvid was said to have been beaten badly by a group of Soviet security people while on shore. I was told that it was seven men beating one boy.

Second, one of the U.S. physicians notes that the left arm was bandaged from the base of the fingers to approximately the armpit, and that there were "several superficial, clean lacerations on the exposed fingers." Translated into plain English, this means that cuts were made on the fingers with a sharp instrument, perhaps either a very sharp knife or a razor blade. The tips of the fingers contain an extremely high concentration of pain fiber nerve endings. It is highly unlikely that a patient would repeatedly inflict such wounds on himself because of the intense pain resulting from the very first cut.

There is a strong possibility, then, that such incisions were the result of intentional torture. I find it very curious that none of the doctors examining Mr. Medvid attempted to remove the bandage, at least according to their notes, the bandage which covered almost his entire left arm. Indeed, one of the doctors made a note that he made no attempt to test the reflexes of the left arm because of the presence of the bandage.

However, the Air Force psychiatrist does note that a cut on the left wrist that was large enough and deep enough to require three sutures was present. The Soviet physician asserted gratuitously that it represented a self-inflicted wound, hinting that Mr. Medvid tried to cut his own wrists in a suicide attempt. This is very important. Surprisingly, the Air Force psychiatrist appears to accept this without question, despite the more reasonable hypothesis that the left arm had been involved in torture.

Finally, the U.S. psychiatrist noted "several ecchymotic areas on the right arm in various stages of resolution." "Ecchymosis" is the medical term for severe subcutaneous bruising. "* * * various stages of resolution" would indicate that perhaps these bruises were not inflicted all at the same time.

It suggests that the trauma occurred therefore perhaps not from a fall but as a result of repeated blows with some blunt instrument.

In conclusion, the above evidence that massively potent drugs were given presumably along with physical torture and mental duress permits one to conclude that Mr. Medvid was not a free agent acting by his own free will. The normal concept of personal responsibility, as developed in our political and medical traditions, does not permit us to conclude that persons suffering such mental and physical abuse to which Mr. Medvid was subjected can be described as competent.

So I would also reject the third conclusion of the Air Force psychiatrist who had been appointed by the State Department.

If we may summarize the conclusions, it appears that the psychiatrist believed that Mr. Medvid was incompetent when he jumped ship, but competent when he returned to the ship. Just think about that for a minute and carry that to its logical conclusions. The State Department psychiatrist seems to be saying that Mr. Medvid was obviously insane when he decided to defect to the United States from the Soviet Union, but regained his sanity when he made his decision to return. This is a conclusion that, to me, would

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be more worthy of the KGB than of the U.S. psychiatric profession—and I am ashamed of that conclusion.

I draw the final and inescapable conclusion that Miroslav Medvid desperately wished to stay in the United States of America, but as a result of threats, maltreatment with potent neuroleptics, and probably torture, he bowed to the wishes of the Soviets that he return with them. He then, following instructions which he had received from the Soviets, attempted to misguide the U.S. doctors who examined him. It distresses me, as a member of the medical profession, to report that he succeeded very well in this deception.

Undoubtedly a very grave injustice has been done.

I will take any questions that anyone would want to ask.

Mr. DUNLOP [presiding]. Thank you very much, Dr. O'Malley.

Congressman Lantos, perhaps you would have some questions that you would like to ask of the witness.

Mr. LANTOS. Yes, I would, if I may. Let me first say, Dr. O'Malley, I find your testimony both impressive and devastating, because it so professionally corroborates a layman's gut instincts about all of these issues.

I just would like to review with you a couple of items, if I may.

Dr. O'MALLEY. Certainly.

Mr. LANTOS. You were highly critical of the psychiatrist's report indicating that Seaman Medvid's decision was impulsive, and as evidence you say he had with him in a sealed jar his documents and his watch, which clearly indicate that he had intended to leave and wanted to have documentation with him.

The thing that boggles my mind is the psychiatrist's statements about Mr. Medvid seeking "the gusto and glitter" of New Orleans when in fact we have testimony from the Wymans, the jeweler whom he first met, that he wanted to be taken to the police station.

Now, it is not at the police station that you are looking for "gusto and glitter," and even a psychiatrist ought to know that.

The final observation you make, which has an almost Kafkaesque quality, that the psychiatrist views him competent after the administration of drugs and torture and threats against his family, but incompetent when, as a healthy young man, he makes a carefully thought-out decision, indicates that maybe the psychiatrist was under some higher pressure to issue such a statement, which leads me to my final question, or observation.

Why is it that the Department of State releases the psychiatrist's observations but not the transcripts of Mr. Medvid's original interview with the INS and the Border Patrol?

I wonder if you would care to speculate.

Dr. O'MALLEY. Yes, sir, I would. It would have been very helpful in the analysis of this report had those documents been available. But not only were they not available but also certain parts of the physical exam itself were removed.

And I should think that you would want to have someone who has been cleared by security to have a look at those as well, because I think it would yield more information.

I can't speculate on whether this was indeed a whitewash or whether it was simply shoddy work by the psychiatrist, or whether the psychiatrist was just going to extremes to protect his flanks. He

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accepted as whole cloth one premise of the Soviet doctor, if you can call him that, because he was also a political indoctrinator, and actually put it into his report. I don't know the answer to these questions, but I would hope you and the Congress can get to the bottom of it.

Mr. LANTOS. Could I pursue the question of blood samples and urine samples.

Dr. O'MALLEY. Please.

Mr. LANTOS. Our own people, when they went aboard ship initially and saw him, testified that he appeared sedated. Now, under those circumstances, wouldn't the ordering of urine and blood samples be almost routine?

Dr. O'MALLEY. Oh, absolutely, absolutely.

Mr. LANTOS. Doesn't it border on criminal negligence not to have urine and blood samples taken under the circumstances?

Dr. O'MALLEY. No, sir; it doesn't border on criminal negligence, it is criminal negligence. Let's face it, it's criminal negligence under the circumstances, because the young man's life was involved—to have to return to the Soviet Union and perhaps a prison camp. It was criminal.

Mr. LANTOS. Thank you, Doctor.

Mr. DUNLOP. Thank you very much, Congressman. Dr. O'Malley, Senator Helms had some questions on his mind, and he indicated before he left that he would like for me to ask them on his behalf.

Dr. O'MALLEY. Certainly, I will be pleased to answer them.

Mr. DUNLOP. Thank you very much. We expect that he will return in a moment, and, if he does, then I will desist. But you stated in your testimony that the U.S. psychiatrist knew that drugs had been administered by the Soviets?

Dr. O'MALLEY. Yes.

Mr. DUNLOP. Did the U.S. psychiatrist state that he was told by the Soviets that these drugs had been administered?

Dr. O'MALLEY. Yes, he did so state. He indicated that the Soviet physician said these drugs were administered immediately after Medvid self-imposed this wound on his wrist. This is highly unusual to administer a narcoleptic after a cut is sutured.

If you and I went to the local George Washington or Georgetown Hospital and had a cut sutured, the physician may give us aspirin, but he would hardly give us morphine. And he certainly would not give us Haldol.

Mr. DUNLOP. What, then, were the stated reasons for these drugs being given?

Dr. O'MALLEY. None. Now, you might conclude that—you know, Soviet medicine is far behind American medicine, and it may be that it's just practiced in that manner. But it is my opinion that the Soviet doctor made a slip of the tongue; he was trying to justify the wounds, and he suddenly gratuitously volunteered this.

Mr. DUNLOP. Are you familiar or do you have occasion to be familiar with the normal practices of the Soviets in using drugs of this sort within their own country for control of their population?

Dr. O'MALLEY. Yes; you know there have been many reports of the use of drugs on normal people in the Soviet Union for the purpose of political control. Solzhenitsyn mentioned in some of his books that he observed this firsthand.

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So we are not at all astonished that they imposed these drugs on this young man.

Mr. DUNLOP. Is this the kind of practice that would meet the approval of international psychiatric boards? Have they commented on this practice in general in the past?

Dr. O'MALLEY. No, sir; it would not meet the standards of any decent society to take normal human beings and change their brain chemistry so that they could be subjected to some political way of thinking.

In America a physician would go to prison if he did this. These are acts of bestiality.

Mr. DUNLOP. So these drugs are never administered for pain in the United States?

Dr. O'MALLEY. Thirty years ago, when I started working with these drugs, there was a concept that maybe they would be of value in pain, and at that time we did administer them to test, to see would they work for pain.

But not in modern medical history of the last 20 years.

Mr. DUNLOP. How persistent are these drugs in the body? Are they cumulative in their effect on the body? Do they have an impact that goes beyond a normal dose if they are given in repeated or larger doses?

Dr. O'MALLEY. Yes, sir; a very important question—and I compliment you on it.

They have a long-acting effect in the body. They do tend to have an accumulative psychiatric effect. They are not like the ordinary drug that you take and 4 hours later it's worn off; they have a profound and continuing effect. And even after they are metabolized, some of their metabolites are active pharmacologically.

Undoubtedly these metabolites could have been found in Medvid's bloodstream and especially in his urine.

Mr. DUNLOP. Is there a possibility or a prospect that the drugs that were administered to this individual could cause him lasting or permanent physical or neurologic damage?

Dr. O'MALLEY. Neurologic damage, of course. This can occur as a side effect of the drugs. I don't think whoever gave the drugs, if they were bestial enough to administer these drugs under these circumstances, could have cared much about the side effects.

Mr. DUNLOP. Did the report that you had an opportunity to review indicate who was responsible for the medical practice? Whose patient was this young man when he was in U.S. custody?

Dr. O'MALLEY. Yes; there were two physicians who examined him. I wouldn't call him a patient of those physicians. One was the Air Force psychiatrist who was consulting with the U.S. Department of State. And the second was a doctor who did a routine but very limited, very superficial examination of the patient. Then a Soviet doctor was present at all times, and joined the patient in laughter when the patient would aggravate the American doctors.

Mr. DUNLOP. So there would be no grounds, in your judgment, at this point, for the board of psychiatry or any board of review that the medical profession has to bring these officers before some kind of review for their treatment of this individual, or their analysis?

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Dr. O'MALLEY. Certainly. I think they should be brought before a review. If I had my way, I would take their license away. It's disgraceful what's involved here.

I am a member of the American Medical Association; I know that they would not look favorably upon this type of conduct by an American physician.

[The chairman returns.]

The CHAIRMAN [presiding]. Doctor, we are not in command of our own lives around this place; we have to go and vote. I apologize for having to leave.

Dr. O'MALLEY. No apologies necessary, Senator.

The CHAIRMAN. I believe Mr. Dunlop has asked the first five of my six questions.

You covered this pretty well, but I want you to walk me through it again one more time.

In your professional judgment, could a patient given these powerful drugs within the previous 3 days be considered mentally competent?

Dr. O'MALLEY. Absolutely not. No doubt in my mind.

The CHAIRMAN. Well, Doctor, I think that just about winds it up.

Let me accord to my colleague from the House side an opportunity to ask any questions that he may have.

Mr. LANTOS. I already did, Mr. Chairman.

The CHAIRMAN. You did, very well. I've been asked by several Senators on the floor if we intend to proceed with our examination of what happened, and my answer to them and my answer to you is yes, depending on the circumstances. It would be far preferable if the administration would clean up its act and use this as a lesson.

But that does very little for the Ukrainian sailor.

I've already had a couple of suggestions about how we might be helpful to him even yet.

Interestingly enough, one Senator, who is quite conversant with the ways the Soviet Union works, says you can look for a campaign of slander against this young man, all sorts of charges about what purportedly went on, and that sort of thing. That's the way the KGB works, that's the way the Soviet Union works.

So we'll just see what proceeds from the situation as it exists today. But I want to thank you again, sir, for your willingness to come here this morning. Your testimony has been interesting, helpful, and fascinating.

Terry and David, again I want to congratulate you two young fellows, and I'm proud of you.

If there is no further business to come before the committee, we will adjourn.

[Whereupon, at 11:21 a.m., the committee adjourned, subject to call of the Chair.]

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APPENDIX

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM NORTH CAROLINA

Today we will have two sets of witnesses. This hearing was originally scheduled to hear testimony by Miroslav Medvid, the Ukrainian sailor who sought several times to defect from the tyranny of the Soviet Union, only to be thwarted by a failure of the officials of the State Department, and others, who refused to cooperate with this Committee. Instead we will hear for the purposes of the record the testimony of staff who served the subpoena for the Committee.

We will also hear the testimony of an expert witness, Dr. William E. O'Malley, a distinguished neurophychiatrist and pharmacologist, who, on very short notice, agreed to analyze the medical reports on Mr. Medvid released by the State Department late this past Friday. I am confident that Dr. O'Malley's testimony will raise significant questions about the State Department's assertion that Mr. Medvid's decision to return was a freely chosen decision.

A STATE DEPARTMENT DECISION

Once again, the State Department clearly decided that it is more important to appease the Soviet Union than to allow a young man to have an unfettered chance for freedom.

I was dismayed by the statements of Secretary of State Shultz on Face the Nation on Sunday, when he admitted that Mr. Medvid had faced threats and—as the Secretary put it—"whatever he was subjected to aboard that ship." It is clear that Mr. Medvid was under incredible duress, and I believe that after the testimony here this morning we will understand that his so-called free choice was made under the influence of mind-smashing drugs.

Immediately after Secretary Shultz's statements on Sunday, a formal invitation was extended to the Secretary to appear before this Committee in place of Mr. Medvid. The Secretary declined to come, pleading other engagements. Of course, Mr. Medvid also has other engagements. Nevertheless, further opportunities will be offered to the Secretary to appear here.

IMPLICATIONS OF EXTRATERRITORIALITY

The implications of this event appear to go far beyond the visible requirements of our foreign policy. The Soviets, in their discussions with our staff, in effect asserted that their ship had the status of extraterritoriality, as though it were an embassy or an enclave. These assertions were made after several telephone calls to Ambassador Dobrynin, so they appear to be a reflection of the official and high-level Soviet position. Indeed, the NSA should have intercepts of these calls from New Orleans to the Soviet Embassy.

Moreover, the State Department curiously appears to have acted in accordance with that view. According to the recently released in camera proceedings in the D.C. District Court on November 4 [Ukranian-American Bar Association, et al., v. George P. Shultz, et al.], the government lawyers argued that all proceedings in the Medvid case should be held in secret, without the lawyers for Mr. Medvid present. They argued that the case was "highly sensitive" and the State Department was worried about cross examination of government witnesses in public and was very reluctant to let them testify even in camera.

Furthermore, they stated that the government witness "did not directly negotiate with the Soviets," but that "negotiations of the ground rules were negotiated at the highest levels." There were suggestions that certain "actions were planned by the U.S." and that "the President had indicated that if the Soviets had not backed down, we were prepared to use force."

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These were references to the fact that the Soviets initially refused to return Mr. Medvid for questioning after he had been sent back to the ship illegally on the evening of October 24/25.

Why would force have been necessary? This was an unarmed merchant ship. The U.S. Government had the authority to board it at any time, and the power to quarantine it, and to prevent it from moving. What was the Soviet threat? Did Moscow actually rattle sabres over the defection of one seaman?

The notion that a ship has extraterritoriality while in the jurisdiction of another country is not an idea to be condoned. As a practical matter, it is not the custom to interfere with the discipline on a foreign ship, unless crimes have been committed. It is evident that the allegations that Mr. Medvid had been beaten and kidnapped from U.S. soil were crimes. Why was the U.S. govenment so protective of the Soviets at this time? Why negotiations? Why ground rules? Why did we accept the proposal that a Soviet KGB officer should be present at all times to intimidate Mr. Medvid during our questioning?

One must ask the question whether these so-called "ground rules" were drawn according to some pre-existing secret agreement. Did we accept extraterritoriality of Soviet ships as condition of the grain trade? Is it possible to set aside the constitutional rights of aliens, even Soviet citizens, to appease the Soviet Union?

We do know that the Soviets cannot trust their own citizens outside of Soviet borders without massive intimidation and the use of torture and mind-bending chemicals. The Soviets cannot transport grain without sending their citizens abroad. Is there a secret agreement that we will send defectors back?

It should be noted that the European countries which adjoin Communist nations—West Germany, Sweden, Norway, Italy, and so forth, appear to have a policy of not returning defectors at all. Why is the U.S. policy so different?

SERVICE OF THE SUBPOENA

These were questions which Mr. Medvid's presence would have helped to answer.

On November 9, the subpoena was duly served on the captain of the Soviet grain ship, *Marshal Konev*, and on a representative of the Soviet embassy, both persons who had control of Mr. Medvid's whereabouts. Legal counsel has advised the Committee that such service is equivalent to service on Mr. Medvid himself. Copies of the subpoenas were also provided immediately to the U.S. Customs Service and the U.S. Department of Justice, of which the Immigration and Naturalization Service is a division.

In response to many enquiries after the subpoena was issued, the Commissioner of Customs informed me that the Tariff and Trade Act of 1799 prohibited the departure of vessels from U.S. waters without clearance from Customs, and that it was the opinion of counsel to Customs that the law would not permit the departure of a foreign vessel so long as an unfulfilled subpoena to appear before Congress was outstanding.

Furthermore, it should also be pointed out that the Code of Federal Regulations forbids the departure of aliens whose departure is deemed prejudicial to the interests of the United States. Among such aliens, according to CFR 215.3(j), is "any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local."

Once such an alien has been indentified, INS has an affirmative obligation to prevent his departure. In CFR 215.2, the regulations say: "Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart or attempt to depart from the United States until notified of the revocation of the order."

As the distinguished members of this Committee are well aware, the Commissioner of Customs was apparently overruled by higher authority, and the *Marshal Konev* was cleared to depart on Saturday, November 9, and did depart from Reserve, Louisiana, at approximately 12:15 pm CST on that date.

Not only was it cleared to depart, but the news reports indicate that the U.S. Coast Guard conducted harassment operations against small vessels nearby who were attempting to exercise their first Amendment rights of free speech, and gave the *Marshal Konev* an honor guard out to the open seas.

I have also been informed that an officer of the National Security Council contacted the Department of Agriculture to inquire if the inspectors of the Federal Grain

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Inspection Service and finished their work as expeditiously as possible so that the ship could get underway at the earliest possible moment. [This Committee will be conducting an investigation to ascertain whether all the requirements of the U.S. Grains Standards Act were fully complied with.]

EXECUTIVE BRANCH FAILED TO USE ITS AUTHORITY

It is clear that the Executive Branch had full authority to take whatever action was necessary to allow Mr. Medvid to be present here this morning, but that it willfully and consciously refused to do so. Customs was overruled in its desire to enforce the law impartially. The Immigration and Naturalization Service was on official notice that Mr. Medvid was wanted for an official hearing in this Committee, yet no departure control officer attempted to prevent his departure or to serve notice on him.

By obstructing the legitimate actions of the Legislative Branch, the President's advisors have failed to perform their Constitutional responsibilities.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM ILLINOIS

Mr. Chairman, I commend you for holding a hearing this morning to examine the procedures surrounding grain purchases by foreign nations and to examine the incidents which surrounded the handling of the Soviet vessel, *Marshal Konev.*

We face a desperate situation in the agricultural sector of our nation. It is vital that, at this time, we take positive steps toward increasing our exports.

I applaud the efforts of the Chairman in bringing this important issue before the Agriculture Committee, and look forward to the testimony of our witnesses.

Thank you, Mr. Chairman.

STATEMENT OF HON. MITCH MCCONNELL, A U.S. SENATOR FROM KENTUCKY

Mr. Chairman: I supported the Chairman's decision to subpoena Mr. Medvid to appear before this Committee. While I recognize the unusual nature of this procedure, I also felt that expedient action on the part of the Senate was needed to insure that Mr. Medvid was not forced to return to the Soviet Union against his will. I commend the Chairman for taking this aggressive action.

All too often, we fail to take positive steps to combat Soviet suppression of human rights and it appears we may have one such case right here in American territory. The very fact that Mr. Medvid jumped ship twice shows me that he was deadly serious about leaving the repression of the Soviet Union. Yet for some unknown reason our own State Department people determined that this oppressed Russian citizen was not trying to seek political asylum in this country. Given the circumstances as we know them, this is unbelievable, Mr. Chairman.

I thought we needed a more accurate picture of the events surrounding this entire episode. Furthermore, I felt it was our responsibility as guardians of human rights to give Mr. Medvid the opportunity to decide for himself what he should do, free from the mental and physical pressures of the Soviet government. I hope this action is not too little too late.

[The following material was submitted by Senator Helms:]

[Memorandum, Nov. 5, 1985]

To: Members of the Committee on Agriculture.
From: Jesse Helms, Chairman.
Re Issuance of Subpoena.

I am sure that you are as shocked as I am at the handling of the case of the would-be defector, Miroslav Medvid, a Ukrainian seaman aboard the *Marshal Konev,* a Soviet carrier in the U.S.-Soviet grain trade.

Based upon the available news reports and statements of witnesses, there is reason to believe that Mr. Medvid's original intention was to defect to the United States. However, after gross violations of immigration regulations, the denial of due process, and physical brutalization by Soviet personnel, he has as yet been unable to realize his original intent to gain freedom.

As Chairman of the Committee on Agriculture, Nutrition, and Forestry, I believe that our Committee has an obligation to investigate fully the facts in this matter and its consequences for the U.S.-Soviet grain trade. Undoubtedly, future incidents of this kind will occur.

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Therefore, I am writing to enquire whether you approve the issuance of a Committee subpoena to command the presence of Mr. Medvid before this Committee. I will appreciate a response, whether affirmative or negative, immediately if possible, because I am sure you understand that time is of the essence as the ship may depart from U.S. territorial waters on Thursday or Friday.

The attached memorandum shows that the Committee has ample jurisdiction in this matter. I talked with Senator Lugar this morning, and he supports this action. A member of the Committee staff will call your office by noon on Wednesday, November 6, to poll approval by the Committee of the issuance of this subpoena.

I believe that it is important to give Mr. Medvid an opportunity to reflect upon these events in an atmosphere free from duress and intimidation so that the Committee may benefit from his direct testimony.

JURISDICTION AND FACTS RELATING TO MIROSLAV MEDVID

1. The Committee on Agriculture, Nutrition, and Forestry has jurisdiction over the following areas: (a) "Agricultural production, marketing, and stabilization of prices"; (b) "inspection of livestock, meat, and agricultural products"; (c) "study and review, on a comprehensive basis, [of] matters relating to food, nutrition, and hunger, both in the United States and in foreign countries."

2. The grain trade with the Soviet Union is being carried out under the terms of a Long Term Agreement (LTA) with the Soviet Union negotiated by the Secretary of Agriculture and signed on August 25, 1983 for the express purpose of "production" of food and "stabilization" of trade. The Committee has jurisdiction over such trade under (a) in paragraph 1.

3. The Soviet grain trade, like all export shipment of grain, is inspected by the Federal Grain Inspection Service under the U.S. Grains Standards Act. Matters relating to such inspection come under the Committee's jurisdiction under (b) in paragraph 1.

4. The Soviet ship *Marshal Konev* had a hull inspection by the Federal Grain Inspection at 4:45 PM, Thursday, October 24 at Belle Chasse, Louisiana, and is scheduled for a spout inspection while it is being loaded at the Cargill elevator in Reserve, Louisiana, on November 5.

5. The U.S.-Soviet grain trade obviously includes "matters relating to food, nutrition, and hunger, both in the United States and in foreign countries."

6. The power for "study and review, on a comprehensive basis" of such matters considerably broadens the narrow technical basis which might be implied in the specific legislative jurisdiction. In particular, the Committee has the authority to consider not only the grain trade itself, but the practical conditions under which the grain trade is carried out, particularly those aspects of the trade which take place within U.S. territory.

7. Among the conditions under which the trade is carried out is the question of whether those involved in the trade, e.g., seamen on foreign vessels, have the protection of basic human rights while in U.S. waters. Does the execution of an LTA with the Soviet Union require that aliens within U.S. territory must be denied the protection of the U.S. Constitution? Among the allegations of the denial of human and constitutional rights are the following:

(a) On October 24, between 11:45 PM and 12:45 AM (October 25) Miroslav Medvid asked for political asylum through an interpreter speaking in his native Ukrainian tongue.

(b) At the conclusion of the interview, the INS official asked the translator to reassure Mr. Medvid that nothing would happen to him, and that he would not be physically abused, and that the interview would resume in the morning. However, within approximately one hour of this reassurance, Mr. Medvid was turned over to two employees of the Universal Shipping Company, Mr. Tim Maloz and Mr. Mike Fladd, who conducted him to the offices of the Port Services Company. He was then placed on a PSC launch, piloted by Mr. Ray Guthrie, and taken to the *Marshal Konev* in company with Messrs. Maloz and Fladd. Thus he was denied the opportunity to be informed of his rights, to study his rights, and to fill out the appropriate INS documentation for political asylum with the assistance of Ukrainian-speaking legal counsel. INS regulations state that applications for political asylum shall be made on Form I-589; this form was never presented to Medvid.

(c) The INS Operations Instructions prescribe the procedures to be followed when processing "immediate action" political asylum requests. Such cases are defined as those involving "any national of the Soviet Union." INS Operations Instructions specifically address the processing of cases involving crewmen and require that

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when a crewman requests asylum, as Medvid did, he will be interviewed under oath, and Form I-589 will be executed.

(d) When the PSC launch with Mr. Medvid, Mr. Guthrie, Mr. Maloz, and Mr. Fladd aboard approached the gangway of the *Marshal Konev*, Mr. Medvid apparently realized for the first time that he was being returned to the ship. He immediately jumped overboard, and began swimming back to the shore. A Soviet mate jumped into the PSC launch, and they pursued Mr. Medvid. Mr. Medvid made it to the levee, climbed over the top, and rolled down into the sand behind. The group from the launch found Mr. Medivd, and attempted to force Mr. Medvid back into the launch. Mr. Medvid resisted forcefully. It is alleged that Mr. Maloz and the Soviet mate held Mr. Medvid down with force, while the launch returned to the ship and brought back seven more Soviet seamen, who carried Medvid back onto the launch after brutalizing him. Witnesses report that an unreasonable amount of force was used to subdue him. Mr. Medvid continued to resist with force and vehemence until he was carried on to the ship. It is Soviet practice to carry KGB agents on such ships for security purposes.

(e) Mr. Medvid remained in the custody of Soviet personel for three days on the *Marshal Konev*. On October 28, he was transferrd to the U.S. Coast Guard cutter *Salvia*. A team of at least six U.S. Officials, comprised of representatives of the Department of State, the Immigration and Naturalization Service, the Treasury Department, and a U.S. government doctor, began interviewing him on the *Salvia* in the presence of two officials from the Soviet Embassy, a Soviet doctor, and the Master of the *Marshal Konev*. No provision was made for a Ukrainian interpreter or Ukrainian legal counsel, nor was he given an opportunity to complete Form I-589.

(f) Because Mr. Medivd was ill, he was then removed to a nearby U.S. Naval Support Facility on shore, where he spent the night. The State Department has stated that Mr. Medvid was examined medically at this point, but has offered no evidence that he was given a blood or urine analysis in order to determine whether he had been drugged. News reports state that the Soviets have said that Mr. Medvid was a "schizophrenic" who required treatment—a typical response by the Soviets towards those who seek freedom.

(g) On the morning of October 29, while at the U.S. Naval Support Facility, and without benefit of a Ukrainian translator or Ukrainian-speaking legal counsel, Mr. Medvid signed a Russian-language statement indicating his desire to return to the Soviet Union. Once again, this action took place in the presence of Soviet officials. He was then returned to the *Marshal Konev*.

(h) On the basis of the information presently available, it appears that Mr. Medvid was denied due process under the U.S. Constitution, that he was denied equal protection, and that his basic human rights were violated. He was beaten, possibly drugged, and denied appropriate medical treatment. He was subdued with unreasonable force, and subjected to duress by the presence of Soviet security officials during questioning.

8. The question to be determined is whether grain marketing agreements with the Soviet Union require the United States to ignore equal protection of the law for aliens who enter the United States in connection with the grain trade. Mr. Medvid's appearance before the Committee is essential to obtain a balanced view of the facts in the case.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE SUPPLY OF GRAIN

The Government of the United States of America ("USA") and the Government of the Union of Soviet Socialist Republics ("USSR");

Recalling the "Basic Prinicples of Relations between the United States of America and the Union of Soviet Socialist Republics" of May 29, 1972, and other relevant agreements between them;

Desiring to strengthen long-term cooperation between the two countries on the basis of mutual benefit and equality;

Mindful of the importance which the production of food, particularly grain, has for the peoples of both countries;

Recognizing the need to stabilize trade in grain between the two countries; and,

Affirming their conviction that cooperation in the field of trade will contribute to overall improvement of relations between the two countries;

Have agreed as follows:

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ARTICLE I

The Government of the USA and the Government of the USSR hereby enter into an agreement for the purchase and sale of wheat and corn for supply to the USSR. To this end, during the period that this Agreement is in force, except as otherwise agreed by the Parties, the Soviet foreign trade organizations shall purchase from private commercial sources, for shipment in each twelve-month period beginning October 1, 1983, nine million metric tons of wheat and corn grown in the USA; in doing so, the Soviet foreign trade organizations, if interested, may purchase, on account of the said quantity, soybeans and/or soybean meal produced in the USA, in the proportion of one ton of soybeans and/or soybean meal for two tons of grain. In any case, the minimum annual quantities of wheat and corn shall be no less than four million metric tons each.

The Soviet foreign trade organizations may increase the nine million metric ton quantity mentioned above without consultations by as much as three million metric tons of wheat and/or corn for shipment in each twelve-month period beginning October 1, 1983.

The Government of the USA shall employ its good offices to facilitate and encourage such sales by private commercial sources.

Purchases/sales of commodities under this Agreement will be made at the market price prevailing for these products at the time of purchase/sale and in accordance with normal commercial terms.

ARTICLE II

During the term of this Agreement, except as otherwise agreed by the Parties, the Government of the USA shall not exercise any discretionary authority available to it under United States law to control exports of commodities purchased for supply to the USSR in accordance with Article I.

ARTICLE III

In carrying out their obligations under this Agreement, the Soviet foreign trade organizations shall endeavor to space their purchases in the USA and shipments to the USSR as evenly as possible over each twelve-month period.

ARTICLE IV

The Government of the USSR shall assure that, except as the Parties may otherwise agree, all commodities grown in the USA and purchased by Soviet foreign trade organizations under this Agreement shall be supplied for consumption in the USSR.

ARTICLE V

Whenever the Government of the USSR wishes the Soviet foreign trade organizations to be able to purchase more wheat or corn grown in the USA than the amounts specified in Article I, it shall notify the Government of the USA.

Whenever the Government of the USA wishes private commercial sources to be able to sell to the USSR more wheat or corn grown in the USA than the amounts specified in Article I, it shall notify the Government of the USSR.

In both instances, the Parties will consult as soon as possible in order to reach agreement on possible quantities of grain to be supplied to the USSR prior to purchase/sale or conclusion of contracts for the purchase/sale of grain in amounts above those specified in Article I.

ARTICLE VI

The Government of the USA is prepared to use its good offices, as appropriate and within the laws in force in the USA, to be of assistance on questions of the appropriate quality of the grain to be supplied from the USA to the USSR.

ARTICLE VII

It is understood that the shipment of commodities from the USA to the USSR under this Agreement shall be in accord with the provisions of the American/Soviet Agreement on Maritime Matters which is in force during the period of shipments hereunder.

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ARTICLE VIII

The Parties shall hold consultations concerning the implementation of this Agreement and related matters at intervals of six months, and at any other time at the request of either Party.

ARTICLE IX

This Agreement shall enter into force on execution and shall remain in force until September 30, 1988, unless extended by the Parties for a mutually agreed period.

Done at Moscow this twenty-fifth day of August, 1983, in duplicate, each in the English and Russian languages, both tests being equally authentic.

[News Release, Nov. 7, 1985]

SENATE AGRICULTURE COMMITTEE SUBPOENAS MEDVID

Senator Jesse Helms, Chairman of the Senate Agriculture Committee, at 2 p.m. today signed a subpoena, authorized yesterday by the Committee, intended to be served on Miroslav Medvid, the Ukrainian sailor who sought to defect from a Soviet grain ship and was forcibly returned by U.S. authorities.

Two Senate staff members, Terry Wear and David Sullivan, left immediately for New Orleans to attempt to serve the subpoena. Wear is deputy counsel of the Senate Agriculture Committee, and Sullivan is a member of Helm's personal staff.

Helms said that Medvid is being sought to give him an opportunity to testify as to the circumstances of his apprehension and to resolve the differences between accounts provided by his Ukrainian interpreter and State Department officials. The Committee has called a hearing for Tuesday, November 12 at 9:30 a.m. to hear Medvid.

The document was drafted in three languages; English, Russian and Ukrainian. Under U.S. law, the subject of a subpoena must understand what is being required of him in order for the subpoena to be binding. Copies of the document will be delivered to the U.S. Customs Service. The ship may not leave U.S. waters without U.S. Customs clearance.

The Chairman pointed out that the Soviet ship, the *Marshal Konev,* was in the United States as a result of the Soviet purchase of U.S. grain, and was being inspected under U.S. grain inspection laws.

The ship is presently near Reserve, Louisiana, about 25 miles inland.

"The Agriculture Committee feels it important to study the conditions under which the grain trade with the Soviets takes place," said Helms, "and to determine whether sailors on foreign vessels are being denied the equal protection of the law while in U.S. waters."

Helms said that evidence given in court in New Orleans this morning and testimony of Administration witnesses before the Senate Subcommittee on Immigration and Refugee Policy has established that grave irregularities had occurred when Medvid attempted to defect.

The Agriculture Committee has broad powers, for comprehensive study and review, over matters relating to food in the U.S. and foreign countries, as well as specific legislative jurisdiction on matters relating to the production, transportation, and inspection of agricultural commodities in the domestic and export trade.

The issuance of the subpoena requires that Medvid must remain in the country as long as he is wanted for the investigation by the Committee.

The vote to approve issuance of the subpoena was as follows: For approval: Helms, Dole, Lugar, Cochran, Boschwitz, Hawkins, McConnell, Zorinsky, Leahy, Boren, Dixon, Heflin, and Harkin; Against: Andrews; and "Present", Melcher.

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UNITED STATES OF AMERICA

Congress of the United States

To MIROSLAV MEDVID

, **Greeting:**

Pursuant *to lawful authority, YOU ARE HEREBY COMMANDED to appear before the* _____ *Committee on* Agriculture, Nutrition and Forestry *of the Senate of the United States, on* November 12, *19*85, *at* 9:30 *o'clock* A. *m., at their committee room* at 328A Russell Senate Office Building, Delaware & C Streets, N.E., Washington, D.C., 20510 *then and there to testify what you may know relative to the subject matters under consideration by said committee.*

Hereof fail not, *as you will answer your default under the pains and penalties in such cases made and provided.*

To any member or employee of the United States Senate *to serve and return.*

Given *under my hand, by order of the committee, this* 6th *day of* November, *in the year of our Lord one thousand nine hundred and* 85

Jesse Helms JESSE HELMS

Chairman, Committee on Agriculture, Nutrition and Forestry

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СПОЛУЧЕНІ ШТАТИ АМЕРИКИ

КОНГРЕС США

Медвідю, Мирославу

Згідно з юридичними повноваженнями, цим Вам наказується з'явитися перед Комітетом по сільському господарству, харчуванню й лісному господарству Сенату Сполучених Штатів Америки, 12-го листопада 1985 року, у 9:30 год. ранку, до залу засідань Комітету, кімната 328А, Сенатський будинок ім. Рассела, що знаходиться на розі вулиць Сі й Делавер, Північного Сходу Вашінгтону, О. К., для подання свідчень відносно того, що можливо Вам відоме у питаннях, які обговорюються в даному Комітеті.

Ваша поява є неодмінною. У разі невиконання цього розпорядження, Вам прийдеться зазнати кари, що належить у подібних випадках.

Для доручення й повернення офіційною особою Сенату США.

Підписано моєю рукою, за дорученням Комітету 6-го листопада 1985 року.

Джессі Гелмс

Голова Комітету по сільському господарству, харчуванню й лісному господарству

I, ANDREW V. FESSENKO of the Library of Congress staff, do certify that I am thoroughly familiar with the Ukrainian language and that the above is a true and complete translation of the attached English document.

Andrew V. Fessenko

Subscribed and sworn before me this 7th day of October 1985, A.D.

Notary Public

My commission expires October 31, 1988

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СОЕДИНЕННЫЕ ШТАТЫ АМЕРИКИ

КОНГРЕСС США

Мирославу Медвиду

Согласно юридическим полномочиям, настоящим Вам приказано
RSP ~~появиться~~ перед Комитетом по сельскому хозяйству, питанию и лесному хозяйству Сената Соединенных Штатов, 12 RSP-го ноября 1985 года, в 9:30 часов утра, в зал заседаний комитета, комната № 328А, Сенатское здание им. Рассела, находящееся на углу улиц Си и Делавер, С.В., Вашингтон, О.К., 20510, для дачи показаний относительно того, что Вам возможно известно по вопросам обсуждаемым данным комитетом.

Появление Ваше обязательно. В противном случае Вам придется, за невыполнение этого предписания, понести полагающееся за это наказание.

Для вручения и возвращения должностным лицом Сената США.

Подписано моей рукой по поручению Комитета, сего дня, 6-го ноября 1985 года.

ДЖЕССИ ХЕЛМС

Председатель Комитета по сельскому хозяйству, питанию и лесному хозяйству

I, R Sheila Penners of the Library of Congress staff, do certify that I am thoroughly familiar with the Russian language and that the above is a true and complete translation of the attached English document.

R Sheila Penners

Subscribed and sworn before me this 7th day of October 1985, A.D.

Notary Public

My commission expires [illegible]

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[News Release, Nov. 9, 1985]

MEMO TO CORRESPONDENTS

The following is a statement by Senator Helms on Saturday after the Soviet ship *Marshal Konev* left port in Louisiana:

I am dismayed that the U.S. State Department has prevailed in its insistence that the Soviet ship *Marshal Konev* be cleared to leave U.S. waters while Miroslav Medvid is still aboard. Had it not been for this appalling development, Mr. Medvid would have been available to appear Tuesday before the Senate Agriculture Committee on a proper subpoena, properly served. Then the truth, whatever it is, would have been known.

The Executive Branch has the authority to cooperate with the enforcement of the Legislative Branch subpoena. The Commissioner of Customs personally informed me of this authority after the subpoena was issued by a 13-1 vote of the Agriculture Committee. I made specific inquiry of the Commissioner on that point, and he responded honestly and factually.

By obstructing the legitimate action of the Legislative Branch, the President's advisors have failed to perform their Constitutional responsibilities.

I have not talked further with the Commissioner of Customs, but it appears obvious that he was overruled in his attempts to fulfill his duties under the law.

Once again, the State Department clearly decided that it is more important to appease the Soviet Union than to allow a young man to have an unfettered chance for freedom.

The point is this: The State Department itself has released documents showing that Mr. Medvid was beaten by the Soviets and drugged with powerful, mind-suppressing drugs. Yet State Department officials persist in the unbelievable claim that Mr. Medvid chose to go back to slavery of his own free will.

This weird scenario that we have witnessed during the past few days clearly reveals that the State Department has shown, once again, its true colors. In fact, the very same diplomat who last year refused asylum to an East German family—including small children—has played a hand in the Medvid case, and as a result Mr. Medvid is on his way back to the Soviet Union. One can only speculate on his fate.

I am reluctant to believe that the President is personally responsible for this action performed in his name, especially since more than two-thirds of the U.S. Senate asked the President two days ago to have Mr. Medvid examined in a third country.

I urge the President, when he arrives in Geneva, to insist that the Soviets bring Mr. Medvid to Switzerland where he can have a chance to be examined impartially—after appropriate time for recuperation from his ordeal. Otherwise, we may never know the truth about this tragic episode.

STATEMENT OF TERRANCE J. WEAR, DEPUTY COUNSEL, SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Good morning Mr. Chairman and members of the Committee. I am pleased to appear before you today to report to you on the details of the service of the congressional subpoena requiring the appearance of Mr. Miroslav Medvid before the Committee this morning.

By way of background, Mr. Chairman, I want to indicate for the record that I have had substantial experience in the service of subpoenas and other legal documents. Prior to joining the Committee staff, I spent 6 years in the practice of law, specializing in civil and criminal litigation. On several occasions during that period, it was necessary for me to locate and serve defendants and witnesses who, for one reason or another, were in hiding or who had previously avoided the service of subpoenas or other legal process. I am also generally familiar with merchant shipping practices and the merchant marine industry.

After the Committee authorized the issuance of the subpoena on November 6, I and other staff members contacted the Congressional Research Service for purposes of having the subpoena translated into Russian and Ukrainian. When the translations were complete, Chairman Helms signed the English version of the subpoena and Mr. David Sullivan and myself departed by plane for New Orleans to serve the subpoena on Mr. Medvid.

We arrived at the airport in New Orleans at approximately 5:30 p.m. on Thursday, November 7. We were met at the plane by two U.S. Customs officials, who stated that they had instructions to drive us to Mr. Medvid's ship, the *Marshal*

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Konev, which at that time was taking on grain at the Cargill grain elevator in Reserve, LA.

Prior to departing from Washington, I had been advised that I could call on the Customs Service for whatever assistance I needed in boading the *Marshal Konev*, including the accompaniment of customs officials when I boarded the vessel. The Customs official in charge, Mr. Joel Mish, informed me, however, that he had been authorized to drive me to the ship and to wait while I delivered the subpoena, but that neither he nor his men were authorized to board the vessel with me.

Mr. Mish initially attempted to take us directly to the ship. When I perceived that this was his intention, I advised him that we would not be ready to leave for the ship for some time, since I needed to obtain a Russian language translator and make arrangements to meet with Messrs. Joseph and Wayne Wyman, two individuals who had met Mr. Medvid during his initial attempt to defect and who could identify him. Mr. Mish expressed some surprise at my request, but agreed to return to the Customs office at the New Orleans airport so that I could gather together the remainder of my boarding party.

During the next 3 to 4 hours, I made arrangements for Messrs. Joseph and Wayne Wyman, a Russian translator, and a Ukrainian translator to meet Mr. Sullivan and myself at the airport. All these parties agreed to accompany Mr. Sullivan and myself to the *Marshal Konev* and attempt to contact Mr. Medvid. Mr. Sullivan also made arrangements for the local Louisiana parish sheriff and 4 deputies to meet us enroute to the ship and escort us to the vessel.

After having gathered the members of the boarding party together, Mr. Sullivan and I departed for the *Marshal Konev*. We met the sheriff near the Cargill elevator at Reserve, LA, transferred our party to the sheriff's cars, and rode with the Sheriff and his deputies to the dock where the *Marshal Konev* was taking on grain.

Upon reaching the ship, I and the members of my boarding party walked down the dock to the ship's gangway. Two young men in blue working uniforms stood guard at the foot of the gangway. I introduced myself, indicated that I was the deputy counsel for the Senate Committee on Agriculture, Nutrition, and Forestry, and that I and certain members of my party wished to see the ship's captain. One of the young men stated that two of us would be allowed to board the ship to meet with the captain, but that the others would have to remain on the dock. After some additional negotiations, the young men agreed to allow 3 persons to board the ship; Mr. Sullivan, myself, and the Russian translator.

We then proceeded up the gangway and met the ship's captain on the deck at the top of the gangway. The captain took us to his stateroom and we began to converse through the Russian interpreter.

After introducing ourselves and having given the captain our business cards and after having been introduced to the ship's first mate and chief engineer, who had also entered the captain's cabin, I stated that I had some official papers for Mr. Medvid and asked to see him. The Captain stated in reply, that he had been given explicit orders by the Soviet government not to permit any outside contact with Mr. Medvid until representatives from the Soviet embassy in Washington, DC had arrived. He further stated that two embassy officials would be arriving at the ship on Friday, November 8, at approximately 2:30 p.m. We continued to ask to meet with Mr. Medvid. Each time, however, the Captain insisted that he had to obey his orders and that such a meeting was not possible at that time. When asked about Mr. Medvid's condition, the captain replied that Mr. Medvid was very nervous.

During the course of our conversations with the captain, he stated that he would neither discuss nor accept the subpoena calling for Mr. Medvid's appearance until the Soviet embassy officials had arrived. I explained what the subpoena required and asked whether I and my party would be permitted to board the ship the next day to meet and talk with the captain and the embassy officials. In response, the captain assured me that we would be able to reboard the vessel.

During the course of our conversations, I observed that the captain had a pack of U.S. Marlboro cigarettes on the desk in his stateroom and that he had smoked at least one of these cigarettes in my presence. I then told the captain that I had purchased some cigarettes for him, and that I would bring them with me when we came back to talk with him and the embassy officials on the following day. We then left the ship and returned to New Orleans for the night.

On Friday morning, November 8, with Mr. Sullivan and two other witnesses observing, I opened the end portions of two cartons of Marlboro cigarettes, folded two copies of the subpoena, and inserted one copy of the subpoena between the rows of cigarette packs in each of the cartons. I then re-sealed the cartons and told those who had been watching that I intended to present the cigarettes to the captain of the *Marshal Konev* that afternoon.

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At approximately noon on November 8, I was advised by the officials at the Cargill elevator that two Soviet officials were due to arrive at the *Marshal Konev* at approximately 12:30 p.m. I then assembled the boarding party, consisting of myself, Mr. Sullivan, Mr. Joseph Wyman and his nephew Wayne, a Russian language translator, a Ukrainian language translator, and two Customs officials, at the Meridien Hotel in New Orleans. We departed from New Orleans and, enroute to Reserve, LA, again met with the local Louisiana parish sheriff and 8 deputies, transferred our party to the sheriff's automobiles, and again drove to the Cargill elevator and dock where the *Marshal Konev* was taking on grain.

Upon arriving at the ship, I was informed by Yevgeniy G. Vtyurin, Second Secretary and Consul at the Soviet embassy, that neither myself nor my party would be allowed to board the *Marshal Konev* and that he would not discuss the matter of the subpoena at all until he had had an opportunity to speak with the Soviet Ambassador, Mr. Dobrynin. He then asked if I could arrange to obtain a telephone for his use.

In response to Mr. Vyturin's request, I asked for and received permission to use the telephones in the Cargill business office. Mr. Sullivan, myself, our Russian translator, Mr. Vtyurin, and the captain of the *Marshal Konev* then went to the Cargill office, where Mr. Vyturin and the captain spent approximately 35 minutes on the telephone communicating with their embassy in Washington.

After completing his telephone calls, Mr. Vtyurin suggested that we go to a restaurant for lunch. In response, I suggested that we remain at the Cargill office, send out for some sandwiches, and begin our discussions while the food was being delivered. Mr. Vtyurin agreed to this suggestion and we began our discussions in the Cargill conference room.

I advised Mr. Vtyurin and the captain of the *Marshal Konev* that I wanted to be sure that they understood what the subpoena required and what the consequences of non-compliance with the subpoena were. I explained that the subpoena required the appearance of Mr. Medvid at 9:30 a.m. at 328A Russell Senate Office Building, Washington, D.C., on this date to testify on issues under the jurisdiction of this Committee, such as the grading and exportation of grain and the role played by Mr. Medvid in that activity, and that, in my view, the U.S. Customs Service would not clear the *Marshal Konev* to leave the United States while the subpoena was outstanding. I also advised them that officials of the State Department could override the decision of the U.S. Customs Service, i.e., the clearing of the vessel, if such action was deemed to be in the national interest of the United States.

After taking several minutes to complete the above explanation and having it translated, thought by thought, for the benefit of Mr. Vtyurin and the captain; I asked the Russian translator to read the Russian translation of the subpoena. Both Mr. Vtyurin and the captain listened to the text of the subpoena being read in Russian and Mr. Vtyurin raised a question about a portion of the translation.

After the subpoena was read, there ensured a long discussion about the three branches of government in the United States. Mr. Vtyurin stated that the U.S. State Department had found that Mr. Medvid should be returned to his ship and that the State Department's decision should be binding on the other branches of the U.S. government. I pointed out that each branch of government in the United States is co-equal and that decisions made by the U.S. State Department do not limit the right or ability of the Congress to examine or investigate the underlying facts and circumstances surrounding Mr. Medvid's defection and subsequent return to the ship and the impact of this action on the international trading of grain. Mr. Vtyurin stated that surely things would be less confusing in the United States if there were a central committee that would decide an issue and simply tell everyone else what the decision was. I pointed out that, in this country, everyone has a say in the decision and that decisions can't be made until everyone has had a chance to voice their opinion and influence the decision. I also pointed out that this Committee and the entire Congress had had no say in this matter as yet.

At approximately 4:00 p.m., Mr. Vtyurin placed another telephone call to his embassy. When he returned after completing the call, he stated that he had informed the Soviet Consular General of the "explanations of the American side" in connection with the subpoena for Mr. Medvid's testimony. He then stated the following:

1. Mr. Medvid doesn't want to see you, he doesn't want to talk to you, and won't leave the ship under any circumstances.

2. The U.S. State Department determined that Mr. Medvid wanted to go back to the Soviet Union of his own free will.

3. All discussions and contacts concerning this matter must be carried out through the U.S. State Department.

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4. The Soviet government hopes the *Marshal Konev* will be allowed to leave the United States when it has finished loading its cargo.

I explained to him and the captain that the purpose of this subpoena is to provide notice of the time, place, and other particulars of the hearing, and that this notice had been effectively communicated to both he and the captain through our discussion of the contents of the subpoena and the reading of the subpoena in Russian. Mr. Vtyurin commented that he and the captain had accepted my explanations of the subpoena, but that neither he nor the captain physically accepted the document. He conceded, however, that the subpoena was available to them, should they have chosen to physically accept it. He also stated that he knew that we wished to board the *Marshal Konev* to deliver the subpoena to Mr. Medvid, but that we would not be allowed to do so.

After approximately 2½ hours of discussions on the matters outlined above, Mr. Sullivan, myself, Mr. Vtyurin, the Russian translator, and the captain returned to the dock at which the *Marshal Konev* was moored. We thanked Mr. Vtyurin and the captain for the meeting. As my party was preparing to leave, I handed the captain a small paper bag containing the two cartons of Marlboro cigarettes, saying "These are for you."

Mr. Vtyurin started to ask whether the bag contained a subpoena, but he was having trouble saying the word "supboena" and, before he could finish his question, I and Mr. Sullivan cut him off by saying "cigarettes; cigarettes". Mr. Vtyurin and the captain laughed about the matter and the captain carried the cigarettes up the gangway and onto the ship.

On Saturday, November 9, at 12:45 p.m., a copy of the subpoena addressed to Miroslav Medvid was served on Mr. Thomas M. Richards, vessel operations officer for Universal Shipping Agencies, Inc.; James Business Park; St. Rose, LA, 70087. Universal Shipping Agencies, Inc. is a shipping agent for the *Marshal Konev*. One duty of a shipping agent is to accept service of process on behalf of the vessel.

The above statement is a true and correct summary of my effort to effect service of the subpoena addressed to Mr. Miroslav Medvid and issued by the Senate Committee on Agriculture, Nutrition, and Forestry, on November 6, 1985.

Memorandum From David S. Sullivan, Legislative Assistant to Senator Helms

THE ISSUE OF EXTRA-TERRITORIALITY IN THE SUBPOENA TO SEAMAN MEDVID

On Friday, November 8, 1985, the Soviet Diplomat, Yevgeniy G. Vtyurin stated that the Soviet ship *Marshal Konev*, was "Soviet territory" and as such was "totally immune" from U.S. jurisdiction. At the time, I thought he was merely saying this for rhetorical effect to try to explain his attempts to deny that the subpoena for Seaman Medvid had in fact been legally served. I now believe, however, Diplomat Yevgeniy G. Vtyurin may have had some reason for believing this to be true.

It is possible that there was a secret agreement between the State Department and the Soviet Embassy in Washington at some point to grant the *Marshal Konev* extra-territorial status. If this is true, it could also explain why the *Konev*'s captain was reportedly reprimanded for allowing American officials to board, and why I was refused permission to board the ship the second time by the diplomat.

It was reported to me that President Reagan told the Congressional Leadership on Friday, November 8, 1985 that he wanted Seaman Medvid to have a second interview by U.S. authorities, and that he would not sacrifice Seaman Medvid for the Summit. On the morning of Saturday, November 9, 1985, Deputy National Security Advisor Admiral Poindexter ordered U.S. Department of Agriculture grain inspectors off the *Marshal Konev*, in order to expedite its departure. I tried to contact Admiral Poindexter twice Monday in order to determine why he helped the Soviets and thwarted the President's wishes, but he would not return my calls.

Vice President George Bush, in New Orleans yesterday, said he was concerned that the Reagan Administration had changed its position on the Medvid case. He stated "It doesn't look good. My heart is troubled by it." This is a good summary of this case.

Statement of William E. O'Malley, M.D., PH.D.

Mr. Chairman, and members of the Committee. My name is Dr. William Edward O'Malley. I currently live in Virginia, near Leesburg, a suburb of Washington, D.C. My professional medical training is in the general areas of neurology, psychiatry,

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and pharmacology. I have two doctorate degrees, an M.D. and a Ph.D., and I am Board-qualified in neurology and psychiatry.

I have spent most of my professional life studying the effect of drugs on the brain and the nervous system. I attended medical school at the University of Maryland and Georgetown University, here in Washington, D.C. I left Georgetown after spending six years there in training, and after spending an additional four years as a teacher, researcher, and medical practitioner. I also spent three years at the National Institutes of Health. For the past 15 years, I have held various positions in the U.S. pharmaceutical industry, mainly at Parke-Davis & Co., and at the pharmaceutical division of Dow Chemical Company. Currently I work as a consultant in matters involving pharmaceuticals.

The work which gave me the most satisfaction in my research career was as an independent researcher in studying the effect of the drug L-dopa on Parkinson's disease. The use of L-dopa changes the chemical composition of the brain by increasing the concentration of the chemical compound dopamine, a nomal constituent of the brain. Sufferers from Parkinson's disease do not have the normal complement of dopamine in certain parts of the brain. Those of us who were studying L-dopa at that time discovered that it actually altered the content of dopamine in the brain, and enabled sufferers to function normally. The drug L-dopa is now the standard treatment for Parkinson's disease and is a classic example of how medicine has benefited humanity.

I mention this work because he concept of creating changes in the composition of the brain is relevant to the inquiry of this Committee. My work with L-dopa was preceded by basic laboratory studies on the effects of a drug called chlorpromazine on brain tissue. This is the generic name for one of the two drugs which we now know the Soviets used on Mr. Medvid. In my clinical and laboratory experience, I have found that these drugs profoundly alter emotions and thought processes by making changes in the actual chemical composition of the human brain. For this reason, these drugs are never used in the United States in the manner in which they were used on Mr. Medvid.

Several days ago I was asked to review thoroughly and critically the report of the U.S. Air Force psychiatrist who examined Mr. Miroslav Medvid four days after he sought asylum in the U.S.A. This document was released by the U.S. Department of State. The psychiatrist who did the examination is not named. Rather I should say that his name, along with several other items, was censored from the report. A U.S. Navy physician also carried out a routine, but very limited, physical examination.

I am here today to give to you my clinical impressions of this report. I must say at the outset that I was appalled by what I found when I carefully studied this document. In my judgment, it did not meet the minimal professional standards that one would expect of this kind of examination. However, I shall do my very best, as objectively as possible, simply to supply the facts, and my opinions as to the unfortunate circumstances surrounding this case.

Let me begin at the end of this case. The Air Force psychiatrist, who apparently was called in by the U.S. Department of State to examine Mr. Medvid, made the bottom line conclusions after his examination that:

1. The reason this 25-year-old sailor defected from the ship and sought political asylum was "based primarily on a rather impulsive decision, 'Grabbing for the glitter and gusto', rather than any deep-rooted political or moral beliefs."

2. Mr. Medvid showed "no evidence suggestive of any ongoing significant organic mental disorder, including substance-induced intoxication, that would have impaired his competency." He thereby indicates that there was no evidence that Miroslav Medvid was under the influence of drugs.

3. Mr. Medvid was "clearly competent" in making his decision to return to the Soviet Union.

All of these three conclusions must be strongly challenged, because the data in the reports show that they are obviously in error.

CONCLUSION NO. 1

Conclusion No. 1 is in error in asserting that Mr. Medvid acted impulsively. To the contrary, just the opposite is true, since Mr. Medvid premeditated his defection. According to eye-witness accounts, Mr. Medvid brought with him his watch and papers carefully sealed in a water-tight jar, obviously prepared before his jump from the ship.

Also, Mr. Medvid made not one impulsive decision to seek asylum, but rather four separate and consecutive decisions. The second decision was when he told the Ukranian interpreter in New York via telephone that he did indeed want asylum.

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The third decision was when he jumped from the launch returning him to the Soviet ship. The fourth was when he strongly resisted the ship security personnel who beat him up and tied him after he had swam the second time to the shore.

These actions are characteristic of a highly-determined, purposive personality, fulfilling a premeditated pattern.

CONCLUSION NO. 2

Conclusion No. 2, that Medvid was not under the influence of drugs, is in error because the Soviet doctor admitted that two neuroleptic-type drugs had been recently administered. He volunteered the names of these drugs as Seduczine and Amonizine. The first name is equivalent to the U.S. drug, Haldol. The second, more properly spelled Aminazin, is equivalent to chlorpromazine, or the U.S. drug, Thorazine. I have checked their chemical structures. Both are strong, mind-controlling neuroleptics. The authoritative textbook by Goodman and Gilman goes further and describes Haldol as an "extremely potent" major tranquilizer.

These drugs are known as major tranquilizers to distinguish them from the better known and weaker minor tranquilizers such as Valium. The minor tranquilizers do not act in the same fashion. They are relatively mild in their effects. The major tranquilizers, are known to have potent action and to remain present in the body for weeks.

The exert a strong effect, diminishing the will power, and making the patient more susceptible to conditioning. They have an extremely potent taming effect; they even tame wild animals. In the human, they take away aggression and combativeness, and they produce a mental state of serenity and indifference, without simultaneously clouding consciousness. One of their benefits, in U.S. practice, is that to the casual observer, the personality of the patient appears unimpaired or normal, but the actual situation is that emotional and thought processes are profoundly altered. Thus a psychotic or violent individual can live in ordinary society. Nevertheless, neurologically speaking, transmission between brain cells for large areas of the brain are effectively blocked or profoundly depressed.

Brain cells, or more correctly, neurons, have processes extending from the cell body called dendrites and axons. Dendrites carry nerve impulses to the cell body; axons carry nerve impulses away from the cell body and to the dendrites of other neurons. The juncture of the axon of one cell with the dendrite of another is known as a synapse. It is at the synapse that the two drugs in question act to depress neurotransmission. In other words, the drugs act to block normal brain function. For reasons we do not fully understand, the drugs act selectively in those areas of the brain which control the affective functions.

It is a characteristic of these drugs that, to the untutored observer, the patient under their influence can appear normal, and act normally. A manic patient who is doing violence to himself or his surroundings can be subdued fairly quickly when these drugs are administered. But when unscrupulous Soviet practitioners give them to a person who is normal to begin with, the drugs can have a devastating effect on the personality.

It should be noted that the medical reports indicated that Mr. Medvid appeared "sedated" while still on the Soviet ship. However, the neuroleptic drugs are not, strictly speaking, sedatives. What happened, in all probability, was that he had been given massive doses to subdue his will and his captors had not yet adjusted the dosage so that he could appear "normal." We may therefore hypothesize that by the time of the full examination on the U.S. ship and Naval Hospital, the dosage had been adjusted.

I find it significant that when Mr. Medvid spent the night at the Naval Hospital, the Soviet doctor stayed with him. It would be very easy to continue administering medication under those circumstances. It would not be surprising that U.S. diplomats and other officials without medical training would be misled, but it is unforgivable for medical professionals to have been misled.

It is well-known that Soviet psychiatry has misused these drugs to control political dissent. There have been many reports of the use of such drugs by Soviet doctors in prison and re-education camps, as Alexander Solzhenitsyn has described in popular fashion. The use of drugs to control political behavior derives from the Soviet reliance on Pavlovian theories of conditioning.

Standard pharmacological texts, such as Goodman and Gilman, describe the side effects of these drugs. These include nasal congestion and dry mouth. Blood pressure and temperature can be profoundly altered in either direction. The pulse is usually elevated.

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In reviewing the medical reports of Mr. Medvid, it should be noted that the patient "admits to nasal congestion . . . and slight sore throat" for the two or three days preceding the October 28 psychiatric examination. At one point, he is described as taking a long drink of water before answering a question. His temperature is recorded as 100.4 degrees (1.8 degrecs above normal). His blood pressure was 130/88; for a young, athletic man, this is rather on the high side. The pulse was 96 on one physician's examination, and 84 on the other; this is again high in a young, athletic man, where one might expect a pulse of 65—or at least 72, the norm for the population at large.

Taken together, these indices are highly suggestive that a drug was present in the patient's body, and having an effect upon him. Yet for some unknown, but seemingly inexcusable reason, neither urine nor blood samples were taken. These undoubtedly would have established beyond doubt that Mr. Medvid's body contained these highly potent drugs and their metabolites. Such tests are routinely done, even on race horses.

Moreover, neuroleptics slow down the brain waves, producing a higher quantity of alpha and theta waves. Yet no electroencephalograph (EEG) was taken. There is not even any indication in the record that an observation for nystagmus was taken. This is a simple, visual test of eye movements, which, when positive, almost always indicates the presence of drugs. It takes about 20 seconds. Of the twelve cranial nerves, three are involved in eye movement; yet the only observation recorded that the cranial nerves were "grossly normal." In medical terms, this means that an over-all, superficial observation was made, without tests. This is positive evidence that these simple tests were skimmed over, and not performed.

In short, once the Soviet doctor admitted that neuroleptics had been administered, all of these tests should have been done on a high priority basis.

CONCLUSION NO. 3

Conclusion No. 3, that Mr. Medvid was "clearly competent" is certainly in error. The psychiatrist himself notes that Mr. Medvid was under mental duress as a result of threats to his parents, his "Mama and Papa." Moreover, a correct interpretation of the observations of the traumatized tissues strongly suggests that physical torture had been administered to Mr. Medvid.

First of all, we know that Mr. Medvid was said to have been beaten badly by a group of Soviet security people while on shore. Second, one of the U.S. physicians notes that the left arm was bandaged from the base of the fingers to, roughly, the armpit, and that there were "several superficial, clean lacerations on exposed fingers." Translated into plain English this means that cuts were made on the fingers with a sharp instrument, perhaps either a very sharp knife or a razor blade. The tips of the fingers contain an extremely high concentration of pain finger nerve endings. It is highly unlikely that a person would repeatedly inflict such a wound on himself because of the intense pain resulting from the first cut.

There is strong probability, then, that such incisions were the result of intentional torture. I find it very curious that none of the doctors examining Mr. Medvid attempted to remove this bandage, which covered most of the left arm, especially since the exposed fingers were so badly traumatized. Indeed, a note is made that no attempt was made to test the left arm reflexes because of the presence of the bandage.

However, the Air Force psychiatrist does note that a cut on the left wrist that was large enough and deep enough to require three sutures. The Soviet physician asserted that it represented a self-inflicted wound, hinting, that Medvid tried to cut his own wrists in a suicide attempt. Surprisingly, the Air Force psychiatrist appears to accept this without question, despite the more reasonable hypothesis that the left arm had been involved in torture.

Finally, the U.S. psychiatrist noted "several ecchymotic areas on the right arm in various stages of resolution." "Ecchymosis" is the medical term for severe subcutaneous bruising. Thus, not only the left arm, but the right arm also was involved in severe trauma—the result, perhaps, of a severe fall or a beating. However, the fact that the ecchymotic areas were "in various stages of resolution" suggests that the trauma occurred not at the same moment, as in a fall, but as the result of repeated blows. This could be evidence that Mr. Medvid was beaten on the arm with a blunt instrument, or else that he was subdued during his initial escapes and capture with brutal force.

In conclusion, the above evidence that massively potent drugs were given presumably along with physical torture and mental duress permits one to conclude that Mr. Medvid was not a free agent acting by his own free will. The normal concept of

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personal responsibility, both as developed in our political and medical traditions, does not permit us to conclude that a person suffering the mental and physical abuse to which Mr. Medvid was subjected can be described as competent.

CONCLUSION

If we may summarize the conclusion of the U.S. psychiatrist, it appears that he believed Mr. Medvid was incompetent when he jumped ship, but competent when he returned. Carried to its logical conclusion, he seems to be saying that Mr. Medvid was obviously "insane" when he wished to defect to the United States from the Soviet Union, but regained his sanity when he made his decision to return. This is a conclusion that is more worthy of the KGB than of the U.S. psychiatric profession.

I draw the final and inescapable conclusion that Miroslav Medvid desperately wished to stay in the United States of America, but as the result of threats, maltreatment with potent neurolepteics, and probably torture, he bowed to the wishes of the Soviets that he return with them. He then, following instructions which he had received from the Soviets attempted to misguide the U.S. medical doctors who examined him. It distresses me as a member of the medical profession to report that he succeeded in this deception. A very grave injustice has been done.

RÉSUMÉ OF DR. O'MALLEY

William Edward O'Malley.

Born 9/18/30 at Pittsburgh, Pennsylvania.

Married 1960 to Carole Ford.

Education: B.S. Duquesne University, 1952; Ph.D. in Pharmacology, Univ. of Md., 1955; M.D. Georgetown 1959; Interned Georgetown 1960; National Institutes of Health, 1960–1963; Neurology Residency, Georgetown, 1963–1966.

Positions: 1966–1970 Assistant Professor of Neurology and Pharmacology, Georgetown.

Position required teaching, practice and research. I concentrated on clinical research of neurologically active experimental drugs. I worked with Roche, Parke Davis, Lederle and Norwich among others. I did all 3 phases of clinical research for these companies. Several major drugs.

1970–1973 Hired by Parke Davis on 2 year contract to develop neurologic drugs and to obtain an NDA on L-dopa. This was accomplished. All 3 phases were under my direction during this period, and I was given responsibility for most of the company's neurological drugs, and I was asked to stay.

1973–1975 Promoted to Director to Medical Affairs for the U.S.

Position required membership on the research committees for all Parke-Davis drugs, liason between corporate management in Detroit and Research in Ann Arbor. Liason between Research and Regulatory.

1975–1979 Vice President Merrell National.

Reported to the President. Designed research protocols for NDA candidate drugs and for NAS/NRC defense. Liason with FDA. Screened and signed off all protocols developed in Research. Sat on the Research Committee.

1979 to present. Consultant to Merrell National for about one year after my resignation. Then consultant to a variety of companies thereafter.

Particular Drug Interest: Research and development of drugs with a neurologic action especially anti-hypertensives, anti-convulsants, anesthetic agents. Also anti-cancer compounds, gynecologic and gastro-intestinal drugs. Experience has been both in broad areas and in highly specialized areas.

Publications in major national journals: About 25.

I shall be pleased to supply a full and detailed C-V at your request.

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